
IN THE

District Court of the United States

FOR THE

Northern District of California

Second Division

SPRING VALLEY WATER COMPANY,
Complainant,

vs.

CITY AND COUNTY OF SAN FRAN-
CISCO, Et AL.,

Defendants.

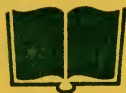
Nos. 14,735, 14,892,
15,131, 15,344, 15,569,
Circuit Court of U. S.,
Ninth Judicial Circuit,
Northern District of
California, and 26 and
96 District Court of U.
S. Northern District of
California, Second Di-
vision.

ORAL ARGUMENT

OF EDWARD J. McCUTCHEN, WARREN OLNEY, JR., AND
A. CRAWFORD GREENE, FOR COMPLAINANT,
BEFORE HONORABLE H. M. WRIGHT,
STANDING MASTER IN
CHANCERY

VOLUME I.

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Company, complainant,
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MR. GREENE: Your Honor will, we feel certain, appreciate the difficulties involved in arguing the cases now before the court. It is apparent that in any presentation made with a due regard to the practical limits of time, there will be subjects to some of which no reference will be made, and to others of which only a most general consideration can be given. We shall attempt to discuss the more important points of difference between the city and ourselves, trusting to the presentation at the trial to make

plain to your Honor the company's position on other contested points. We feel entirely free to do this because of the way in which these cases have been tried. The mere statement that over 11,000 pages of testimony have been taken, more than 230 exhibits introduced into the record, and more than 150 days devoted to trial, demonstrates the time spent and the evidence adduced. It does not, to our minds, show the much more important fact that the method of trial pursued—that of considering item by item each of the problems presented—has left us with clean cut issues to which the testimony was specifically and definitely directed. For this, we feel that the parties have your Honor to thank, and we cannot but hope that there has been established, for the benefit of others who will follow, a valuable and effective precedent.

We cannot, however, disguise either the number or the complexity of our problems,—problems in many instances unsettled by prior decisions or authoritative discussion. Before proceeding to the particular consideration of these cases, it is proper, notwithstanding your Honor's familiarity with the properties of complainant, to give a few minutes' time to the history of their assemblage and operation.

The city of San Francisco and the company now known as Spring Valley Water Company are of approximately the same age. Incorporated in 1858, pursuant to legislative enactment, when San Francisco was but a village, the predecessor of complainant, the Spring Valley Water Works, was required to lay 3,000 feet of pipe a year and furnish without charge water to the city for extinguishment of fires, while its income was assured by the provisions of the statute which authorized it to charge rates which would yield not less than 20 per cent per annum on the actual capital invested in its works. The company immediately undertook the performance of its duties. It developed its water, laid its pipes and engaged in the public service. In 1865 it acquired all the property of the San Francisco City Water Works, and it

was at that time supplying between two and three million gallons of water per day. As the population of the city increased, the demand for an increased supply of water became correspondingly insistent. Whereas in the early days there was enough water, practically within the city limits, to meet the demand, as more was required, the company was forced to go farther afield, the necessity for storage to protect the city in years of small rainfall was appreciated, and the policy of expansion, now so graphically illustrated in Calaveras Valley, was entered upon. The Lobos Creek system was built first, in 1858. Pilarcitos followed, in 1862. San Andreas was the next unit, in 1871. Merced was acquired and utilized in 1877, the same year in which the Upper Crystal Springs system first supplied water. In 1888 the Crystal Springs Dam was sufficiently built to permit the company to use water impounded behind it, and it was in the same year that the first supply from Alameda Creek was acquired. In 1899 the unit at Pleasanton was constructed and water taken from that source and in 1900 the Sunol filter beds were constructed and utilized.

The procedure in the development of each unit involved the purchase of reservoir sites, watershed lands; and such water rights as the company was forced to acquire for practical operation. As each system was added to the plant it was united with those already in use, and the complicated supply of today is the direct result of the steady growth of San Francisco and the increased demand for water which, step by step, followed that growth. As the city increased in size, so also did the company. Starting in 1858 with a plant the cost of which was stated in thousands of dollars, it had, in the first decade of this century, lands, structures and rights costing many millions of dollars. It had, from the viewpoint of service, from its inception to the time of the fire, fulfilled its obligations. It had faithfully furnished San Francisco with water, meeting each new demand with an additional supply. In all the criticism of this utility which has been made during the last half century, there was, so far as we are advised, not one

complaint, preceding the fire, directed to an insufficiency or inadequacy of supply. The company had, by that time, acquired tens of thousands of acres of land in the City and County of San Francisco, and the counties of San Mateo, Santa Clara and Alameda. It had acquired water rights of great value, and its structures were well conceived and well built. These facts are universally recognized and are conceded in this case.

To this history of accomplishment there were many contributors. Looking back into the years of this period, we find a record, not only in the books, but in the works of the company, of one brilliant spirit who gave the best he had in its service. Naturally gifted as few men are, equipped with a thorough education, untiring in devotion to duty as he found it, unafraid of problems novel or unproved, an engineer with vision as well as training, Hermann Schussler has honored his profession by his works. They have stood the searching test of continuous service.

At its inception, the company gave promise of a happy financial future. Guaranteed a return of 20 per cent on its investment as a reward for undertaking the, even for that time, hazardous business upon which it embarked, there was every reason for those who were behind it to believe that their position was secure. It is of interest to note, however, how imperfectly this promise was fulfilled. For the first five years of the company's existence no dividends were declared. In the years which followed, up to 1879, we find the most prosperous financial history written upon the pages of the company's records; but at no time did the return to its stockholders exceed 12 per cent. In 1879, the date at which the present Constitution became effective, the power of fixing rates became vested in the board of supervisors, and it is from that time that the controversies between the Spring Valley Water Works and the City and County of San Francisco date.

The history of the company during the period from 1880 to 1900 is interesting as showing a continually decreasing return until, in 1903, we find the first suit brought by the company to

enjoin the operation of rates fixed by the board of supervisors. That suit, as your Honor knows, was followed by two others instituted to enjoin the enforcement of rates passed for the years 1904-05 and 1905-06. Those suits have been tried and determined, and it has been decreed that the rates complained of were unjust and confiscatory.

The disaster of 1906 was felt by complainant, as perhaps by no other public utility in California. Many of its structures were injured, its revenue was cut off, its rates were the same rates which the Federal Court has declared were unjust and confiscatory. Following the fire, an assessment was levied upon the stockholders of the company, which resulted in the company's obtaining \$840,000, practically all of which was expended in repair and new construction, and, in addition to this, the loss of revenue during this period was approximately a million dollars.

We now enter upon the period with which the present litigation is concerned. It became necessary, in the early part of 1907, for the supervisors to again fix rates for the year 1907-08. At this time, instead of considering or making any allowance for the large capital expenditures to which the company had been put, or attempting to co-operate with the company in the re-establishment of its plant and business, the supervisors passed an ordinance reducing the rates passed for the years 1902-03 by approximately 19 per cent. Again the company was forced to bring its troubles into this court. Suit No. 14,275 was filed in June, 1907, and the company was granted a temporary injunction against the enforcement of the rates complained of. The 1902 rates were collected under the protection of this order, and no money was impounded. It has been stipulated with the city that, had the company collected but the enjoined ordinance rates for this year, its revenue actually collected would have been reduced by the sum of \$250,000.

In fixing the rates for 1908-09, the board of supervisors established in February, 1908, rates corresponding to the 1902 ordinance schedule of rates, the schedule considered in the 1903, 1904 and

1905 cases, with some modifications of minor import. An injunction was again secured. While the company nominally collected, for a portion of the time, rates 15 per cent in excess of the 1902 ordinance schedule of rates, it did not actually begin to collect this excess until November 1, 1908, and the 15 per cent excess was collected for only eight of the twelve months of the fiscal year 1908-09.

MR. SEARLS: Do I get that clear, Mr. Greene, that the board, in 1908, did restore the 1902 ordinance?

MR. GREENE: That is correct.

Furthermore, the excess collected was from private consumers and was not applied to the water furnished to the municipality itself. Pursuant to the terms of the order granting the injunction, the company impounded with the Special Master appointed by the District Court the excess so collected, amounting to \$172,993.68.

For the fiscal year 1909-10 the board of supervisors re-enacted the rate of the preceding year, and the history of the preceding year was repeated. During this year the company collected the same rates as during the preceding year, corresponding approximately to the 1902 ordinance rates, plus 15 per cent excess, with an increased hydrant charge of 50 cents per hydrant. The excess so collected, amounting to the sum of \$298,675.64, was again impounded.

For the five years, from July 1, 1910 to 1915, with the exception of certain minor changes of comparative insignificance, the same rates were passed as for the year 1909-10, the company in each year securing an injunction against the enforcement thereof and collecting approximately 15 per cent in addition thereto. There was impounded for each of the years the following amounts:

1910-11.....	\$315,333.78
1911-12.....	334,097.21
1912-13.....	348,682.76
1913-14.....	366,735.91
1914-15.....	400,712.80

As to each of these funds, interest has been allowed, and there have been certain deductions on account of taxes and the fees of the Special Master, the entire accounts being shown in Plaintiff's Exhibit No. 124. The total net amount impounded, as of the first of January, 1916, in all eight suits, was \$2,280,448.55. The existence of that fund makes these cases particularly important. We cannot, however, refrain from asking your Honor to see in this litigation a deeper significance than this.

The lack of co-operation between the city and the plaintiff is of long standing, and it has developed, with the passing of the years, into unpleasantness and friction. In almost every instance the lack of an authoritative determination of the value of the company's plant has been the cause of this misunderstanding. We do not here attempt to fasten the blame for this condition upon either side to the controversy or upon any individual. It is the fact which is important. In this turmoil of partisanship and lack of co-operation, it seems to us your Honor can render a great public service. It seems to us that it is your privilege, as well as your duty, to value separately, as well as in the aggregate, all of the properties of complainant devoted to the public service. Onerous as the work involved may be, we feel certain that your Honor will feel repaid in having settled a much discussed and important public question. We respectfully urge that your Honor's findings, as to the facts, and your conclusions as to the law, be specific and complete.

THE MASTER: Mr. Greene, do you mean by that to suggest a specific value to each unit of property in the inventory?

MR. GREENE: No, your Honor, that was not what I had in mind; I meant as far as the various groups are concerned. Obviously, the suggestion must be a reasonable one.

THE MASTER: In other words, you mean for me to follow it out in much the same way that Mr. Hazen has and Mr. Dillman has?

MR. GREENE: That is exactly what I had in mind, your Honor.

GOVERNING PRINCIPLES OF LAW.

I wish now to turn to certain governing principles of law, which will be treated very briefly; first of all, the jurisdiction of the court.

We shall not attempt to paraphrase the complaints or the answers, as justifying the intervention of the Federal Court. We need do no more than refer to the fact that these cases are brought under the Fifth and Fourteenth Amendments to the Constitution of the United States, and that if the allegations of the bills are true, complainant is entitled to relief at the hands of this court. Neither the corpus of property nor its use may be taken directly by the public, nor indirectly through regulation, without just compensation. Mr. Justice Hughes, speaking for the court in the

Minnesota Rate Cases, 230 U. S. 352, 433, 57 L. Ed. 1511, said:

“But the state has not seen fit to undertake the service itself; and the private property embarked in it is not placed at the mercy of legislative caprice. It rests secure under the constitutional protection, which extends not merely to the title, but to the right to receive just compensation for the service given to the public.”

We shall, in the absence of discussion from the other side, assume that the court has jurisdiction, and proceed to consider the cases on their merits.

Some General Fundamental Principles:

We are fortunate in trying these cases today, instead of fifteen years ago, for, while rate regulation has by no means reached its maturity, it has acquired certain well-defined characteristics and principles. For the most part these will be considered in connection with the subsequent discussion of the facts, but it is appropriate at this time to determine what general rules have been approved and what restrictions established by the courts. As far back as 1899, the Supreme Court of the United States laid

down the rule by which we are today governed. In

San Diego Land and Town Co. v. National City, 174

U. S. 739, 757; 43 L. Ed. 1154,

that court said:

“What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public.”

In the normal rate case, then, the ascertainment of the following facts is demanded:

- (1) “The reasonable value of the property at the time it is being used for the public.”
- (2) The “fair return.”
- (3) The actual return.

The answer to the second question is, of course, of vital importance, and it requires an exercise of the soundest and best-informed judgment. The point in issue is, however, clear.

The answer to the third question is a simple one, involving with few exceptions an examination of the company's books alone. It is the question of present value in all its ramifications and complications which has bothered courts, regulating bodies and utilities, and has produced a mass of legal literature of greater or less help. It is to the general rules relating to this subject that we now turn.

Present Value:

The Supreme Court of the United States said in

Willcox v. Consolidated Gas Co., 212 U. S. 19, 52; 53

L. Ed. 382 (1909):

“And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase.”

The basis upon which our final calculation is to be made is the present value of complainant's properties devoted to the public service. It is not original cost, it is not the selling price of stocks and bonds. It is not the cost of a substitutional supply. It is, finally, not necessarily reproduction cost which is our goal. It is present value. We shall not burden the record with a citation of authority in support of this statement—that there is an abundance of it, your Honor knows.

In the next place, it is the present value of the entire plant which is to be ascertained. The statement of this principle may sound dogmatic, but the confusion in the opinions will perhaps serve as its justification. There is a plain distinction between the sum of the values of individual parts of a great property and the worth of the whole property. The whole may be equal to the value of its parts, but that this is so is by no means certain. One extreme illustration comes readily to mind. A plant the actual and reproduction cost of which was two million dollars, would not have a value of two million dollars if it had only one hundred domestic consumers. On the other hand, a plant advantageously situated, well conceived, economically built, with a full demand for its product, may well have a value largely in excess of the value of its constituent parts, taken by themselves. It seems to us clear that in logic and in practice no court or commission can safely fix value by taking the sum of the valuations of individual parts unless thereafter the result thus reached is checked by a careful consideration of all other facts which may have a bearing upon the general subject. To ignore, for instance, such questions as the character of the service, the demand for the service, the availability of other service, is to attempt to answer an economic question without regard to basic economic principles. That it is the value of the plant as a working entity which is to be found, the cases hold. One of the most apt statements of the rule is found in

Washburn v. Washburn Water Works, 120 Wis. 575,
98 N. W. 539 (1904),

where the Supreme Court of Wisconsin says:

“Therefore the separate value of the parts in the aggregate would not necessarily approximate to or be any legitimate measure of the value of all the parts viewed as one complete machine, so to speak. The franchise by itself would be valueless. The plant in its parts as realty and personalty according to the character thereof, irrespective of the combination of all into one entire thing, might be of little value, and probably would be, as compared to what they would represent in the new form, produced by the union of many parts into one. The great value is produced by the combination of parts into one complete working machine, adapted in a high degree to the service of man. One might as well endeavor to value one part of any mechanical device by itself as to so value the franchise of a public service corporation by itself, or so value its land, or likewise its movables. To do so leaves out of view the great and often chief element of value which is produced by the combination.”

It is, then, the present value of complainant's plant which is to be determined.

What Is Present Value:

In the trial and argument of the 1903, 1904 and 1905 cases, between this complainant and this defendant, it was strenuously urged that the public has an estate in the property of a public utility and that because of the existence of this estate, value determined on generally accepted lines does not, in an instance like this before the court, apply. This argument was made the basis for the claim that because of the existence of the so-called public estate, the property of a utility devoted to the public service was less valuable than it would otherwise have been. It has been suggested in the opinions of certain public service commissioners that the company is but an agency of the state in the fulfillment of a public trust, and that, since this is so and since its property is dedicated to the performance of the obligations

resulting from such a trust, the properties of the utility are less in value than they would be were there not such an agency and such a trust. Each of these suggestions has received its answer, the first that the property of a public utility is private property and that the public has no estate in it; the second, that the utility is not the agent of the municipality because, among other things, it cannot bind its so-called principal as to either policy or responsibility. There have doubtless been other arguments of similar tenor urged upon the courts as grounds for establishing methods of depreciating the values of public service plants. In not a single authoritative decision, however, with which we are familiar, has any such suggestion even been countenanced. Value is value for all purposes, and the term has the same meaning in a case of this impression that it has in any other case where value is in issue.

Value means worth, in terms of money. When the term is applied to the properties of a public utility it means exactly what it does when it is applied to the securities of a private corporation, to the goods of a merchant, or to the property of an individual. There are difficulties in determining value in one case which do not appear in the other, but it is the same element defined in the same way in all the cases. As in the case of the individual, so with the utility, the means of acquisition of property, whether by gift or adverse use, are immaterial. Given the property in its present condition, we have only to find its present worth in order to determine value. Just as there is no distinction in principle between value when applied to private property and when applied to property impressed with a public use, so there is no distinction between the value of the property of a public service corporation for purposes of condemnation, sale or rate fixing. Given the same property to value, the purpose for which the valuation is to be made in no way affects its making. Let us point out one reason for this: If the value of public service property for purposes of sale, for instance, was more than that for fixing rates, the purchaser thereof would pay for such property more than he could be compensated

for in rates. It is, then, the present value of complainant's property devoted to the public use, with which we are concerned on this branch of the case.

Method of Valuation:

How is present value to be determined? There are many probative facts, each of which is entitled to consideration. The weight to be given to each individual fact, the bearing which it has upon the final result, must be determined by the particular case under review. The Supreme Court has wisely refrained from laying down any one definite measure of value. It is as impossible to do this in the case of a public utility as it is with private property. The situation at the time of the valuation is all important. There are, however, certain facts which should always be examined and weighed in any thorough investigation. It should be carefully remembered, however, that these various facts are but individual pieces of evidence bearing upon value. They are in effect different checks upon value and, if they are to be reliable, each check or method of valuation must be consistently applied and one must not be confused with another. It will not do, for instance, in determining reproduction cost, to take reproduction cost of structures and present market value of lands. Neither in theory nor in fact will the sum of those two, when added to the intangibles, give reproduction cost. In the same way, it will not do, if reproduction cost is sought, to take the reproduction cost of structures and the original cost of water rights. There, again, we have another hybrid. We hope that we shall be able to keep these methods of valuation distinct, and that, in the final analysis, we shall be able to point to the results reached by the application of each method.

What are the probative facts to which the courts have directed us to turn for guidance? They are:

- (1) Original cost and investment of stockholders and bondholders.
- (2) Reproduction cost.

- (3) Value of the securities of the utility.
- (4) Alternative sources of supply—value of the service.

(1) **Original Cost:**

We suppose that it would hardly be an exaggeration to say that in every rate case the proposition that original cost is the equivalent of value is advanced in some form or other. In our case it made its appearance under a very thin disguise when the valuation of water rights was in issue. It is not our purpose to enter, at this time, into a discussion of the relative merits of reproduction cost and original cost as applied to the valuation of property recently acquired. In the case of structures recent costs are often the best evidence. This is because the commodity used or the service rendered is standardized, and competition exists. The value of first cost in estimating the present value of any property diminishes, however, as the time between original acquisition and present valuation increases. When a valuation of work done yesterday is being made today, yesterday's costs are normally controlling. Unless some extraordinary fluctuation occurs, yesterday's costs will be today's. On the other hand, it is clear that the costs of 1858 are likely to bear but little relation to the costs of 1908. The value of land has consistently appreciated; the cost of labor has steadily risen. The cost of materials has increased as to some materials and diminished as to others. Thus, Mr. Justice Hughes, in the

Minnesota Rate Cases, 230 U. S. 352, 454; 57 L. Ed. 1511 (1913),

said:

“It is clear that in ascertaining the present value we are not limited to the consideration of the amount of the actual investment. If that has been reckless or improvident, losses may be sustained which the community does not underwrite. As the company may not be protected in its actual investment, if the value of its property be plainly less, so the making of a just return for the use of the property

involves the recognition of its fair value if it be more than its cost."

In

San Diego Land and Town Co. v. Jasper, 189 U. S. 439, 442; 47 L. Ed. 892 (1903)

the Supreme Court, after stating that the basis of the valuation must be "the reasonable value of the property at the time it is being used for the public," said:

"That is decided, and is decided as against the contention that you are to take the actual cost of the plant, annual depreciation, etc., and to allow a fair profit on that footing, over and above expenses."

The actual cost of complainant's properties now in use will be the subject of a discussion by us later in this argument. It is sufficient for us to say here that while entitled to consideration as a probative fact upon the question of value, it is evidence only, and, of itself, in no sense value.

(2) **Cost of Reproduction:**

Someone has said that if a thing is worth having at all it is worth at least what it would cost to produce it. That, in substance, is the reason for the application of the theory of cost of reproduction less depreciation in a valuation such as here required. It is unquestioned that this method of determining value has, in the great majority of cases, been given greater weight than any other by courts and commissions. In Whitten on "Valuation of Public Service Corporations," p. 69, sec. 72, appears the following statement:

"The general trend of recent decisions has been to make reproduction cost the sole or controlling basis of value for rate purposes. Some courts plainly state that in their opinion actual cost, capitalization and other factors are to be considered only to the extent that they may throw light on the cost of reproduction or existing depreciation."

The method has been treated by the Supreme Court as being, in general, the most reliable indication of value available, in:

Willcox v. Consolidated Gas Co., 212 U. S. 19; 53 L. Ed. 382 (1909);

Knoxville v. Knoxville Water Co., 212 U. S. 1; 53 L. Ed. 371 (1909);

Lincoln Gas & Elec. Light Co. v. Lincoln, 223 U. S. 349; 56 L. Ed. 466 (1912);

Minnesota Rate Cases, 230 U. S. 352; 57 L. Ed. 1511 (1913).

In a recent Federal case,

Louisville & Nashville, etc., Co. v. Railroad Commission,
196 Fed. 800, 820 (1912),

we find this clear statement:

“In reference to the question of value with the view of rate regulation, the most reliable test ordinarily is the cost of the reproduction of the road as it exists. * * * The original cost of a road may in some cases reflect light on, or even determine, the present value, as when it is of very recent construction. But ordinarily, it is of little assistance in that regard, since many items of value may be donations by the government or by individuals, as is the case of the south and north, or the road may have been built long before the period of inquiry at greatly less or greatly higher prices than those prevailing at the time of the inquiry. Or its original cost might be involved in obscurity, and may include the cost of abandoned or destroyed portions of the property, which should not figure in the inventory for the present time, or the road may have been bought at a forced sale in times of panic at a nominal price or in inflated times at a corresponding price; or the road, costing little originally, may have developed from many contributing causes into being property of great value. And in every case, after finding the original cost, when possible to be done, the question would still have to be solved as to whether such original cost is the same as the present value, which would involve the determination of the present value for such comparison independent of original

cost, and in no other or better way than on reproduction values.”

The cost of reproducing the lands, structures, water rights, working capital, and going business, of the complainant in this case is, therefore, one of the most important questions to be considered, and it is to this question that a large part of our argument will be directed. In this connection the question of depreciation must be considered. On this point we shall suggest that in view of the long life of this property, the fact that only in the last fifteen of this company's 58 years of existence was depreciation considered anywhere, and the further fact that only within the last few years, if at all, has it been recognized by the body fixing complainant's rates, reproduction cost cannot be depreciated upon any theory which presupposes an allowance during the early years of the company's history.

(3) **Present Value is not Measured by the Market Value of Stocks and Bonds:**

The courts have repeatedly said that while the market value of the utility's stocks and bonds may be considered, it is generally of very slight significance.

In previous litigation between the complainant in this case and the City and County of San Francisco, reported in 192 Fed. 137 (Cir. Ct. 1911), this court said:

“The aggregate value of bonds and issued capital stock of the company at present market prices is not a reliable index of the value of the plant, because such prices often rise and fall from the operation of causes which have little or nothing to do with the real intrinsic value of the property, and the bonded or other indebtedness of the company may exceed the actual value of its property.”

We cannot but feel that the statement of Judge Hough in *Consolidated Gas Co. v. City of New York*, 157 Fed. 849 (Cir. Ct. 1907),

is particularly apt here:

“Nor do I think the price, as shown by recorded quotations, paid for the stock and securities of complainant during the last 20 years, is of the slightest value. The stock has apparently been at times the subject of speculation, the recorded prices have varied so widely as to render any safe conclusion impossible, and the only result I can reach, from the consideration of these figures, is that at times the recorded prices are out of all proportion to the possibilities of the gas business, and at other times have reflected unwarranted lack of confidence in the possibilities of the same.”

In the *Minnesota Rate Cases*, 184 Fed. 765 (1911), Judge Sanborn in the Circuit Court of Appeals held that the market prices of stocks and bonds were no guide to the value of the properties there considered for rate-making purposes, and that statement was expressly affirmed in Justice Hughes' opinion in the Supreme Court.

We shall consider the securities of complainant later in our argument, but we may state frankly here that, because of the attitude of the public authorities toward complainant,—the necessity, in fact, for the institution of these particular suits—it is our contention that market quotations of complainant's securities have no bearing and are entitled to no weight in the final determination of value.

(4) **Alternative Sources of Supply—**

Value of Service:

One of the guides for determining value is the necessary cost of acquiring similar property capable of the same service, or, what amounts to the same thing, the investment that would be required to enable one to render an equivalent service.

In the case of standard commodities, this principle has a most important bearing on value; competition is one of the most accurate tests. The absence of actual competition does not, however, render the principle inapplicable, although it does render

the actual application less accurate and trustworthy. In the case of a property peculiarly adapted to, and whose utility is based upon, a particular service, one thing is clear. The cost of duplicating the service, of obtaining an adequate substitute, is important evidence of the value of the original service. It is, the courts have said, an indication of actual value, "an element to be considered." For that reason it was and should be considered in this case.

There have, at various times been suggestions that one method for determining value is the capitalization of earnings. We shall dismiss that suggestion with a word.

The earnings which a company receives are a function of its rates. Rates are the subject of inquiry in this investigation. Therefore, to attempt to capitalize the rates and thus reach value is to complete the circle. As one of the commentators upon this subject has said:

"If, then, earning capacity is taken as the measure of its own bases, the calculator is following the circumference of a circle, and is then in a fair way of solving the problem or perpetual motion."

Or, as Mr. Whitten says (p. 54):

"It is a clear case of reasoning in a circle. We have the evident absurdity of requiring the answer to the problem before we can undertake its solution. The advocates of the market value theory cannot really mean what they say."

With the values determined by the various measures considered before it, the court will be in a position to exercise its judgment as to the value of the properties under review.

THE AGREED INVENTORY.

Before proceeding to a detailed examination of the questions involved in reaching a conclusion upon this question, we shall consider the agreed inventory and the general character of the evidence introduced at the trial of these cases.

The "Joint Inventory" was introduced as "Plaintiff's Exhibit 11" and was entitled:

“Inventory of the Physical Properties and Structures of the Spring Valley Water Company in San Francisco, San Mateo, Santa Clara and Alameda Counties, California. As of December 31, 1913. Prepared Jointly by Representatives of the Spring Valley Water Company and the City of San Francisco, May 1, 1914.”

This inventory was used as a basis for determining the reproduction cost of the property of the Water Company by the witnesses of plaintiff and defendant alike.

It was prepared and checked with the utmost care.

In the introduction appears the following statement, written under date of July 7, 1914, by Metcalf.

“Late in the month of November (1913) this work was organized and City Engineer and special counsel for the city were approached in the hope of bringing about joint agreement with the city authorities upon the inventory of the company’s properties to be used in the litigation incidental to the settlement of the rate suits and the taking over of these properties by the City of San Francisco.

“Meanwhile the city authorities proceeded independently to make an inventory of the Water Company’s properties and with a view to facilitating their work were given copy of an inventory and estimate of value of the properties of the Spring Valley Water Company which had been completed in the year 1912 for the Water Company by J. G. White & Company, Incorporated, and at a later date the original note books, plans and other data assembled by the J. G. White & Company representatives were loaned to the city authorities for purposes of examination and identification of the property.

“Thereafter the representatives of the company and of the City of San Francisco, to whom had been intrusted the detailed study of the inventory, met, and after comparison of each of the individual sheets of the inventory, covering the entire

properties of the company, agreed upon the inventory set forth in the following pages.

“In view of the care with which the property has been inspected and the inventory has been prepared, with freedom of access to the records, books and vouchers, and the knowledge of the officials and employees of the Company and the city, this agreed inventory of the properties of the Spring Valley Water Company, of date December 31, 1913, is believed to be as complete and reliable as can be obtained.

“As the expense of work of this sort is great, and a reduplication useless, it has seemed wise to print the inventory for permanent record. This has been done in this volume with the greatest care in comparison, proof reading and checking, the latter work being done independently by the representatives of the Water Company and the City. The agreed inventory therefore constitutes an equitable starting point, for any arbitration, rating or condemnation proceeding that may be brought, after applying correction for the changes that may have occurred during the interval from December 31, 1913, and the date of such proceeding.”

The inventory was introduced by Sharon (37).

“MR. OLNEY: Q. Has there been prepared an inventory of properties of the company?

“MR. SHARON: There has, yes sir. * * * as of December 31, 1913.

“Q. Has that been checked with the representatives of the City?

“A. It has and it has been agreed to * * * yes; it includes the quantities which were computed by the representatives of the city and also by the representatives of the company and the result of the joint agreement is printed in this volume.

“MR. OLNEY: We offer that volume in evidence as ‘Plaintiff’s Exhibit 11.’

“MR. STEINHART: * * * the agreement did not go to the point as to whether or not the property was used or useful.”

Errors in Inventory.

During the course of the trial a few errors in the inventory were disclosed, as for instance in the discussion upon the amount of the submerged pipe, its weight and the lead required for making its joints; the amount of tunnel or deep cut-and-cover work in the Sunol Aqueduct; the allowance for overbreak in tunnel excavation; and waste in the cutting of lumber, wrought iron, steel, certain land acreages, etc.

Corrections were also made in court at pp. 997-8, 3301 and by “Plaintiff’s Exhibit 180”, covering changes in parcel acreages in one or two instances, and the classification of watershed and reservoir lands in parcels lying partly within the Pilarcitos, San Andreas and Crystal Springs reservoirs.

Considering the magnitude of the property, however, and the number of items involved, the inventory proved very reliable.

Dockweiler, for the city, stated that allowances for waste in materials and in cutting lumber, wrought iron and steel, in excavation overbreak, etc., were made in the inventory. Elliott, Lawrence and Metcalf challenged and denied this statement and cited certain instances in which this clearly was not the case. Your Honor in one case called Dockweiler’s attention to the fact that he had not proven his contention.

Counsel for the company expressed itself as ready to accept proven corrections. Counsel for the city was inclined to stand upon the agreed inventory. Your Honor stated that “If there is any question about it, of course the parties must be bound by the stipulated inventory.” No decision was finally arrived at, and the company will cheerfully accept your Honor’s final disposition of the matter.

The actual work of making and carrying forward all of the corrections that would be involved is substantial and as the final

effect upon value would be immaterial, the corrections have not been made herein. Some of the corrections should be noted:—

(4818) The Master referred to a discrepancy in assumed lengths of submerged pipe lines.

(4309) Hazen makes allowance for the waste in cutting plates in the manufacture of riveted pipe.

(5370) Hermann allows 5% waste upon lumber in excess of scheduled quantities.

Dockweiler states that 5% waste was allowed for in the inventory amount of lumber used in flumes and that waste was allowed for in the brickwork. The latter statement was challenged by Metcalf and the statement as to flumes was challenged by Lawrence, who stated that he checked up the box proper of the flume between the Stone Dam and the Tunnel No. 1 inlet, in looking to see if the battens were included in the inventory and that it checked out exactly to the length, the size of the flume; there was no allowance.

(5744) "MR. SEARLS: Q. In figuring the quantities which are agreed upon in this inventory, for instance, was any allowance made for waste materials?"

"MR. DOCKWEILER: A. Yes, that is all included.

* * * * *

(6709) "MR. SEARLS: Are we to consider this a gratuitous donation, Mr. Greene, or as a lever to get the change in pipe in?

"MR. GREENE: Not either, Mr. Searls, it is a statement of fact, and that is all. I think it is a fair illustration that you will inevitably find that there are patent inaccuracies in the schedule, and we may be able to decide upon the fairest treatment to give it. We simply wanted that fact to appear here in connection with some other changes which Mr. Hazen stated he made before."

* * * * *

(6710) "THE MASTER: Of course, I think it is desirable

from the standpoint of justice to both parties, that the fact should be taken as it exists, if it can be determined; but if there is any question about it, of course the parties must be bound by the stipulated inventory. I think Mr. Hazen's treatment of this subject of the Sunol tunnels, for example, is entirely proper."

* * * * *

(8300) "MR. HAZEN: My statement is limited to submarine pipes, it does not relate to riveted pipe at all. I believe it is a case where the inventory, which generally is a very excellent one, I commend it really very highly generally, but it is a case where due to someone's oversight or in some way or other the material that was put in the inventory is less than the fact and less than the work could be built for.

(8301) "MR. GREENE: Q. In going over the record, Mr. Searls, I find that the two instances where that is apparently more true than any other is this one that Mr. Hazen referred to and the other one for the Sunol tunnels. It is about an offset of the two. * * * *

"MR. HAZEN: That is where I estimated open cut work as open cut at a lower price instead of estimating it as tunnel work as was agreed upon.

"MR. GREENE: His Honor of course ruled that the inventory will govern; I simply brought this question up now because I thought it was appropriate to determine whether we were going to stand inextricably on that ruling or whether it might be agreed between us that as the facts are developed they might change to that extent.

"It really is a matter of indifference to us because one just about offsets the other."

* * * * *

(11045) "MR. GREENE: Q. Some question has arisen, Mr. Elliott, as to whether, in the preparation of the inventory, allowance was made in the various cases for waste. Did you have anything to do with the preparation of the inventory?

"MR. ELLIOTT: The inventory of all the properties in San Francisco was made jointly by Mr. Stocker for the City of San Francisco and myself for the Spring Valley Water Company and in no case did we include in the inventory any allowance for waste of any kind whatever. All of the quantities in there were unit quantities, as actually measured in the structures.

"MR. GREENE: You mention Mr. Stocker's name. I suppose there were other people in the city with whom you dealt in connection with that?

(11046) "MR. ELLIOTT: At the beginning, Mr. Ransom was in charge of the city's end of the inventory, but it was soon shifted to Mr. Stocker; Mr. Stocker, Mr. Ransom and myself met on several occasions, on some of the structures that we took up first, but most of it was between Mr. Stocker and myself.

"THE MASTER: Who handled the inventory on outside properties?

"MR. ELLIOTT: Mr. Lawrence and Mr. Noble, I believe for the city.

"MR. GREENE: I want it clear in the case that in no case was waste taken into account in the preparation of the inventory. You have got Mr. Dockweiler's statement it was, and Mr. Elliott's it was not."

* * * * *

(11081) "MR. GREENE: Was there any allowance made in the ascertainment of these quantities for waste?

"MR. LAWRENCE: Net quantities.

* * * * *

(6099) "MR. SEARLS: * * * I am endeavoring to find out whether in agreeing upon the quantities here Mr. Dockweiler and the Spring Valley representative did not make allowance for cement that would be lost, and sand that would be lost in making their stipulated yardage for concrete? * * *

"THE MASTER: It does not show any stipulation between the parties at best.

"MR. SEARLS: No, I understand that, your Honor, but I understood the witness to say that both parties made an agreement as to the quantity which covered this wastage.

"THE MASTER: It appears that that was not the case.

"THE WITNESS: (Mr. Dockweiler): In getting at quantities, for instance, figuring the number of brick per cubic foot, we took such a unit as would allow for waste.

(6100) "THE MASTER: You have not proved that, Mr. Dockweiler.

"THE WITNESS: No, your Honor, but I am explaining to your Honor how we got at the schedule of quantities."

As stated by us in introducing "Plaintiff's Exhibit 11", this agreed Joint Inventory covers essentially the lands, rights-of-way, and structures of the company, and an allowance for the stock, supplies, etc., on hand, to which must be added, as indicated in the summarized statement contained in the inventory, allowance for the water rights, going concern value, and for any intangible values which should be recognized.

The fair allowance for stock on hand, etc., as agreed to between the city and company, amounting to \$401,350., in gross amount, without addition for overhead allowance, and to \$289,940. in net amount, appears in Joint Exhibit 154, together with the agreement that the net or depreciated value (\$289,940) should apply for each of the years of the rating period—1907-1915—but not thereafter,

"Because of the fact that the years in controversy were not years of normal construction. * * *." (Joint Exhibit 154, page 2).

Water rights, other than those covered by the purchases of riparian lands, and of going concern value, which were but briefly referred to in the inventory, were covered in detail in the testimony of certain witnesses.

The fair allowance for working capital was fully discussed by Metcalf whose final conclusion was accepted by counsel and

witnesses for the defendant. I am correct in saying that, Mr. Searls?

MR. SEARLS: Yes.

MR. GREENE: (Resuming): With reference to the use of the agreed inventory—made as of December 31, 1913, and applicable by agreement to the fiscal year beginning July 1, 1913 and ending June 30, 1914—as a basis for determining the reproduction cost of the property annually for the years 1907 to 1915, it was agreed that the reproduction cost for the years other than 1913 should be determined from that found by your Honor for the year 1913, by making correction for the changes or differences in the schedule of property, structures, rights, intangible elements of property, stock on hand and working capital of the company.

As to the “time at which structures shall be deemed to have gone into use for the purpose of a rating base in a given year”, it was agreed that in any given rating-year which is to be considered, “any structures, which may have been installed between the 1st of July and December 31st of that year, shall be taken into the rating base, and that any structures that were installed subsequent to December 31st of such year, shall be excluded and be brought in the year which follows: that has seemed an equitable arrangement and is satisfactory to each side.” (Tr. 8861; Ab. 2518).

It was agreed further that the above stipulation should apply to land as well as to structures, subject to the limitation that the land shall have been adjudged as in use (8787, 8933-34).

QUALIFICATION OF WITNESSES.

The determination of value in any case is a difficult question. It is necessarily one the answer to which depends upon opinion evidence, and whereas the basis for such opinion should be founded upon facts, the ultimate fact—that of value—is a matter entirely of judgment.

In this case many of the issues, and all of the issues bearing

upon value, must be determined from a consideration of the opinions of witnesses. These opinions differ widely; they are the results of differences in temperament, character, training and experience. The very difficult task which confronts your Honor is to decide, in determining each issue, which opinion should be accepted. That the problem cannot be fairly solved by averaging the figures of different witnesses, goes without saying. As a rule, your Honor must determine that, on each question, there is some one witness whose opinion is entitled to greater weight and consideration than is that of any other witness called upon that subject.

What factors are important in this determination? First of all, and by far the most important, honesty and candor. Dishonesty is even more undesirable in the courtroom than in outside life; it can do more harm. There are, however, different standards of honesty, standards which, unfortunately, have crept into cases of this kind. There is the type which will not tell an untruth but has no hesitation in concealing a material part of a situation otherwise fully disclosed. Much more elusive and troublesome is the witness who is so loyal to his employment that he offers as his opinion expressions which, without such employment, he would never advance, and which in the nature of things it is impossible to refute. This is intellectual dishonesty and is as dangerous and hurtful as any other untruth. The most important qualification a witness can possess is absolute and entire candor with the court, an appreciation of the obligation of his oath to tell not only the truth but the whole truth.

The next requirement which must be imposed upon a witness in a case like this is experience with the subject-matter under discussion. A witness may be honest, but unless he has been instructed by experience he cannot justify his calling. It is this requirement which differentiates witnesses in cases like this from those in ordinary litigation. In the latter instance he customarily states facts; in the former he advances a personal opinion, a procedure which can only be justified upon the assumption that he

has some special knowledge and fitness. We shall have constant occasion to refer to this question of experience throughout our argument. It supplies the best and most convincing answer to many of our problems.

In the third place, there is ability, a qualification to which is necessarily linked the other requirement of education. We do not mean education in any limited sense, but rather as the equipment which a man must have in order that he may accurately deduce conclusions from experience and appreciate causes and effects. It is not enough that a witness has been through the mill. He must have learned his lessons and be able to transmit to others reliable reports of his experience.

Finally, there are the still more intangible characteristics which every one of us rightly heeds. There is the impression made by a wide reputation for ability and integrity, the confidence which one man feels because others have expressed and justified it. There is balance, a refusal to lose one's temper when one's views are questioned and an explanation demanded. There is resourcefulness in meeting new problems. All these matters enter into a witness's qualifications. But there are, as we have said at the start, three cardinal points,—honesty, experience and ability. They are the tests which must be applied to every man who undertook to advise your Honor.

We do not intend to discuss the first of these qualifications as it is applied to the various witnesses. Your Honor will have formed your impressions on this subject as the case progressed, and in only exceptional instances shall we refer to it further. The other two requirements are developed in the record and we shall turn to that subject now.

We shall not consider in detail the qualifications of those witnesses who were called by complainant. We prefer to leave that task to counsel on the other side. We only suggest that, when that discussion is undertaken, comparison be made between the witnesses called by complainant and those called by defendants

with regard to each of the larger issues—lands, structures, water rights, rate-of-return; that counsel also compare the witnesses who covered the entire case—that he compare Dockweiler and Dillman with Hazen and Metcalf.

The four engineers last named were the principal witnesses in this case. They testified on a variety of subjects and their relative candor, experience and ability are matters which we cannot pass without a reference. We shall not discuss the qualifications of Metcalf and Hazen; if their integrity, experience and ability did not become apparent to your Honor during this trial, nothing that it is in our power to say will make them so now. We cannot, however, dismiss our personal indebtedness to them in the same summary way. They have given us, cheerfully and without reservation, help and advice. We have had the benefit of their experience and knowledge, the inspiration of their high professional ideals, the pleasure of their friendship. For us not to make acknowledgment of these facts would be an omission of which we do not care to be guilty.

Nor could we comfortably submit this argument without specific reference to the company's assistant superintendent, J. J. Sharon. His broad and accurate knowledge of the company's properties, his consistent devotion to a duty often burdensome, his absolute truthfulness, we feel sure impressed your Honor as it did counsel on the other side.

On the city's side were Dillman and Dockweiler. What was their equipment? To what respect are their opinions entitled? We shall consider Dillman first. On his own showing Dillman's connection with water properties has been slight. For brevity we quote from the abstract rather than from the record:

(4256) “ * * * engineer for the Contra Costa Water Works for a year or so, during which time I constructed two pumping plants, wells and pipe lines, * * * ”

(4272) “ 18-inch or possibly 20-inch pipe * * * 13 or 14 miles long * * * . ”

(4256) "In 1898 I investigated and testified for the Portland Water Commission, in the sliding land case which arose in the Parks."

(4256) "Took, but promptly sublet, contract for clearing the right of way to Bull Run, for the Portland, Oregon Water Commission."

(4257) "In 1896 became consulting engineer for the San Lorenzo Water Company, and have been in their employ ever since. Made valuation of plant before the Railroad Commission for permit to sell the property."

(4257) "Made appraisal of the Berkeley plant of the Contra Costa Water Company, and after the consolidation of it with the Oakland Company, made appraisal of the whole plant for that company."

(4258) "Have installed air lift plants for the San Lorenzo Water Company at Mt. Eden, the Contra Costa Water Company at Alvarado, and water works at Heppner, Oregon, for San Lorenzo, Oakland, and for well-testing purposes at Oakdale, Stanislaus County, and at Sebastopol."

(4258) "While at Oakdale, about 1912, built new water works and sewer plant for the city, including the development of new supply, and a duplicate pumping plant, complete pipe lines, and storage."

(4261) "Am somewhat familiar with the Contra Costa plant; somewhat less familiar with the Portland Water plant; entirely familiar with the Haywards plant, the Livermore plant, the Oakdale plant and the Sebastopol plant."

It is doing Dillman no injustice to say that his training was in railroad work; that in the operation and management of water works he had had practically no experience, and that in their construction his knowledge was slight. Such familiarity as he had with the problems of distributing water was, in the main, gained from work on the irrigation projects above referred to.

He never built a domestic water works system and has had but little to do with them.

Under cross-examination as to his qualifications in the water works field, Mr. Dillman admits that in the year when he said he was engineer to the Contra Costa Water Company he built the Glue Factory plant, and put in a pump on Cemetery Creek in Oakland; that he was not the general engineer of the Contra Costa Company, but was employed merely for this special work, and that most of the work was done by others.

On his appraisal of the Livermore Water Company, Dillman says it was not in much detail, but sufficient for the purpose, and was accepted by the Railroad Commission; that the plant installed at Oakdale was an air-lift plant to some new wells which he had dug, and was of a very simple construction (4269).

Of his pipe work at Oakdale, Dillman presumes that he laid altogether 12 or 14 miles of pipe, the largest of which was 12-inch, and took up about a mile of the entire amount (4272).

He concludes his water work qualifications by the statements that he does not think that he has been in direct responsible charge of the laying of much of any pipe other than the 13 or 14 miles of 18- or 20-inch pipe for the Contra Costa Company, and the 12 to 14 miles of pipe of maximum diameter 12-inch for Oakdale; that his construction of a concrete flume at Oregon City was probably the biggest piece of dam construction which he had done, carrying 20 feet of water in vertical depth; that he had never built a large earthen dam, though there were some small earthen dams in connection with the various irrigation projects with which he had to do.

Perhaps the most striking and recurrent feature in Dillman's evidence was his intolerance of cost records of completed work, and his easy-going way of testifying upon construction costs based, he says, upon experience, which, as we have previously stated, was very limited in the water works field. He gave neither to the court or cross-examining counsel any evidence, other than this

asserted general experience, upon which his conclusions were based.

We shall refer to certain typical instances:

(4258) "My ability with machinery and my ability to estimate it has not been put to a test in these estimates because I have made no estimate of the pumping plants in the City of San Francisco for lack of time."

(4273) "I have never built a large earthen dam. There were some small earthen dams in connection with the various projects that I have been on, but they were hardly high enough to be called dams."

(4418) "I have not been a collector of data for many years. I did keep a lot of data, principally contract cost, for many years prior to 1900. They were never applicable to jobs in hand and they littered up my office. (4419) When they burned in 1906 I was glad of it."

(4688) "I got no written quotations on riveted pipe to use for the purpose of making my appraisal. I do not keep track of the market prices. I have not paid very much attention to quotations, as I do not regard them as of very great value."

(4691) "I have never read the specifications under which these plates were rolled for Mr. Schussler. I assume this pipe was riveted pipe and the prices that I know about were prices for steel pipe."

(4850) "I have never laid any submerged pipe myself."

(4851) "A great many years ago I quit trying to take the data of one job to apply it directly to another, so I have not kept for a great many years exact data of what I was doing."

(4856) "All I have in the matter of submerged pipe and in the matter of a great deal of other work are impressions gained from the experience that I have had. I have not had very much experience in the matter of submerged pipe. I have not laid any or had any experience in connection with the actual laying of any. The exact point on which I have gained information is very

frequently entirely lost to me, and it is lost in this case except as I have stated."

(4858) "I used costs as a means of ripening my judgment without keeping track of them or filing them away."

(5006) "All statistics of this kind and of every other kind that I know of are partial; and a man starting with partial statistics can, by the selection of items, apparently prove anything he wants to prove. While statistics have great respect paid them, it is entirely beyond their deserts."

(5935) "My acquaintance in large masonry dams is not extensive."

(6344) "In reaching my figures I did not have any of the costs that were actually expended by the company in the construction of the flumes in question. If I had had those costs they would not have influenced me."

(6347) "I relied on my experience and knowledge of costs that had been gained in other work that I considered similar. I have not kept records of the cost of construction to a very great extent. I discarded those records sometime ago."

(6348) "When I estimated the Spring Valley flumes I had no other data based on my own experience except the Oakdale flume. It has been some time since I saw the Oakdale flume."

(6534) "There is nothing scientific about this method or about any method of getting at these values. * * * If my premises are wrong, my conclusion is wrong."

(6592) "I am not an expert on the lands on the Peninsula. I have not made myself familiar with them at all. I have taken the valuation as put in here by these real estate men. My figure of 5% is pure assumption. * * * If my premises are wrong, my conclusions are wrong."

(7084) "The knowledge of the cost of one tunnel would not be of much aid in determining the cost of another tunnel unless you understand all the attendant circumstances."

(7085) "The actual cost of anything the Western Pacific did would have very little effect on my estimate."

(7090) "Referring to overbreakage, which I did not allow because I did not find any in the inventory * * * the lining is given in quantities in the inventory and I did not concern myself with the thickness of it. I did not assume that a hole was broken out which would have been made by the removal of just the quantity of material found in the inventory."

(7092) "I never drove a tunnel in wet sand."

"I did not know that this work was below the water level, but I take it for granted now that it was. I do not know that my price is a reasonable one in view of the evidence that has come in here and which is entirely new to me, and I am not sure but what that water would cost more than what I have estimated for it. It might raise the price of that tunnel a good deal."

(7096) "I did not allow anything for timbering on the Lake Honda tunnel. My estimates, so far as the timber was omitted and should be put in, are undoubtedly lacking."

(7097) "I do not think I have ever seen any figures of the cost of running tunnels in wet sand, and I have not had any experience in running tunnels in such materials myself."

(7375) Oakdale Excavation. "The cost of excavation is probably a good deal more than 50c a cubic yard, but how much more I cannot tell. I cannot find any estimate of the cost of the installation of the pumps and so on, and so that so far as that shaft excavation goes, I am entirely in error and I want to change it."

Referring to omissions in lagging, he says:

(5165) "I didn't request any special plans of this work. I was given plans, and I was given this schedule, and an inspection of the work and the schedule was all that seemed necessary. I did not know the depth of the trench in which (5166) the puddle core was laid below the surface until it came out in the evidence here, and it was not important that I should know its shape and its depth for the purpose of this estimate. I did not make any

inquiry to determine whether it was a deep trench or a shallow one, and I do not think it was important for me to know that fact. This is a small item in connection with a large estimate and an error in that of considerable moment would affect the total by a very small amount. This estimate of mine, in all of its particulars, is not specially exact; * * *"

(5168) "My estimate of the cost of this trench was \$1 per cubic yard, and if the trench was lagged—and I do not know yet that it was—it should have appeared in the inventory as an item of timber which I have added in that way to make it \$2.08."

(5169) "The question of lagging or not lagging did not make much difference, because if the trench were not lagged, there would have been more excavation ordinarily. I did not assume in this case that the trench was not lagged, and at the same time assume that more material had to be excavated than was suggested in the inventory. The size of the trench was not a part of my information; the yardage in the trench was a part of it. The sole object of lagging is to avoid excavation, which would be necessary without the lagging."

Defendant's own witness, Dockweiler, has commented in no uncertain terms upon the danger of such loose and casual methods of keeping track of costs and of making estimates as those of Dillman. No argument is necessary.

(4230) "He may not have done the work, but he may have observed the cost of doing it, and be able to analyze it, and be a surer guide than the man who has done it. I do not think it is necessarily important that an engineer placing a value on a plant of this kind should have done any work of the nature of that involved in the construction of the plant, if he has observed and knows the cost of doing similar work, and has the ability to analyze and segregate between the cost of material and labor, and the overhead charges, such a man with a knowledge of a very limited piece of construction is more safe to estimate on the cost of work than a man who has done a whole lot of work,

and who has never kept track of doing it, and did not know whether he was making money or losing it on a particular piece of work."

(4253) "In my opinion a valuation engineer who has had his appraisals repeatedly subjected to cross-examination, and the test of judicial interpretation, can be just as well qualified to credibly inform a court, as a man who has constructed a great deal of work, but has not kept records of what he has done, because I believe a specialist in a line is better qualified than a man not a specialist."

(4254) "A man who has made designs and carried on the construction and has also kept accurate record, has an advantage over the man who has not made designs and carried on construction."

In considering each of Dillman's estimates, these facts must be remembered. He is not experienced in water works construction. He does not know what such work as he may have done cost. He has no information on outside construction costs. He is often in error as to the kind of work he is appraising. He has shown neither experience nor accuracy.

Second amongst the principal engineer-witnesses for the defense, at least in the amount of testimony given, was Dockweiler, who, at the beginning of the trial, promised to be the principal witness for the city, but who, under the merciless test of a long trial, proved to be so lacking in actual experience in the design, construction and operation of water works, that he was withdrawn by the defendant before the termination of the suit.

Dockweiler has fittingly characterized his own testimony. As to his water works experience prior to 1899 he says: (4219)

"MR. McCUTCHEN: Aside from the iron pipe which is in this system [about one mile of 12-inch in Westlake Park], have you ever had anything to do with the purchase, laying, or examination of steel pipe?

“MR. DOCKWEILER: Nothing other than the instances I cited you relative to that pipe which I had laid in the City of Los Angeles [400 feet of 24-inch or 30-inch sewer pipe under the bed of the Los Angeles river.]”

“Q. Was that cast iron pipe?

“A. No, the plate iron or sheet steel, or whatever they call it.”

* * * * *

(4225) “MR. McCUTCHEN: With the exception of this piece of pipe line in Los Angeles, you have never laid any pipe, have you, and the short piece of cast iron pipe as part of a sewer?

“A. I laid the six miles of wood-stave pipe and the two siphons; that is pipe.

“Q. We will include that also. With the exception of those three pieces of work, you never laid any pipe, have you?

“A. I think that is correct.

“Q. And the last of those was laid when?

“A. I don't know when; well, it would be fair to say not later than 1897.

“Q. Well in round figures, it was 18 years ago?

“A. Yes, sir.

“Q. You never, yourself, constructed any part of any existing water works system, did you?

“A. I think that is fair to say.

“Q. And you never constructed any part of what was at one time a water works system, but which has ceased to exist?

“A. I cannot recall any.

“Q. You never made any pipe, did you, that is, from the plate?

“A. I have been in the factory and seen it made.

“Q. You never made any yourself?

“A. By my own physical labor, no.

“Q. And you never prepared any specifications for the making of any?

“A. Yes, sir.

“Q. Where?

“A. In the Los Angeles case.

“Q. That same piece of pipe?

“A. Well, that is a making of the pipe.

“Q. There never was constructed under your supervision or direction any element of a water works plant, was there?

“A. Other than the items I instance, I don't think so.

“Q. You have never had anything to do with the operation of a water works system, have you?

“A. Directly, no, but I have a very good knowledge, I think, as to the Contra Costa, at least, for the six years that I observed it, reporting on every dollar of expenditure that the company made; and I think I have a reasonable knowledge—

“Q. (Intg.) My question was whether you ever had anything to do with the operation?

“A. No, not in direct charge, but as an observer, I have a fair idea.

“Q. While you were city engineer of Los Angeles, the water plant was privately owned, wasn't it?

“A. Yes, sir.”

As to his water works experience subsequent to 1899:

(4202) “MR. McCUTCHEN: My question is perfectly plain; with the exception then of these two pieces of work, that is, the work at the St. Vincent Orphanage at San Rafael, and the possible laying of a piece of pipe as a part of the Watsonville plant, you have had no charge whatever, nor anything to do with any engineering work since 1899?

“MR. DOCKWEILER: That was built under anything I designed, no, nothing at all.

(4203) “Q. My question was broader than that; have you been employed directly or indirectly with reference to any engineering work in the course of construction since 1899, aside from the two pieces of work to which you have referred?

“A. Yes, you say indirectly. I was employed by the City of Oakland to ascertain the cost of all the work that the Contra Costa

Company was doing, as far as that work pertained to the Oakland division of the Peoples Water Company.

* * * * *

“Q. You had nothing to do with the direction of the work or the designing of it?

“A. No sir, nothing at all.

“Q. So far as that is concerned, you were an entire outsider?

“A. Yes, Mr. McCutchen, but an outsider that was very well posted on the cost of the work.

“Q. You have told us all the engineering work that you have done since 1899, have you?

“A. Yes.”

* * * * *

(4227) “MR. McCUTCHEN: Do you think a man would be qualified to express an opinion with reference to the value of a property as extensive as this is, who has had no experience in the construction of such property?

“MR. DOCKWEILER: Why, yes, he would.”

* * * * *

(4232) “MR. McCUTCHEN: You said that if a man knew the cost of doing similar work he could express an intelligent opinion on the value of a plant; leave out of consideration for the moment, please, all of the information which you have obtained by looking at the records of corporations, and tell us whether you have any knowledge about the cost of doing work similar to the work involved in the construction of the Spring Valley plant?”

* * * * *

(4233) “MR. DOCKWEILER: If you exclude records, I haven't anything. Cost has to be carried on a record. I don't know how anyone ascertained it without making a record.

“Q. And you got the record from the man who made the record?

“A. I got it from the company's office, their vouchers, bills they paid.

"Q. If you did not have the benefit of that information, Mr. Dockweiler, you would be entirely unqualified to determine the cost of reproducing this property, would you not?

"A. If I didn't have any knowledge, why certainly—I would be handicapped."

* * * * *

(4238) "MR. DOCKWEILER: I make it a point to get hold of the latest reports by prominent engineers on water supply projects, and that keeps you in touch with the latest there is on the subject.

"MR. McCUTCHEN: Now, Mr. Dockweiler, without wishing to be offensive, and I don't wish to be, those papers written by prominent engineers give information that you have not derived from your own experience, do they not, and is not that the reason you read them?

"A. Well, you read up to post yourself as to what has been done.

"Q. Answer the question, and then make your explanation.

"A. Well, if a man is working only in one town, he will never know what is going on in another town unless he sees it, or somebody tells him about it, or he reads about it.

"Q. You have not been doing any work in your own town, of an engineering nature?

"A. I did at the points and at the time specify.

"Q. I mean for the past 17 or 18 years?

"A. Well, I have been a pretty fair observer.

"Q. I am talking about work. A. Not other than what I said.

"Q. So you would not be able to write of your own experience, would you? A. Whatever I would write would have to be written from the standpoint of experience I have had just as an observer."

Dockweiler's statement with regard to the proper qualifications, which he thinks that the valuator of public utility prop-

erties should possess, is illuminating, believing as he does that a man without experience in the construction of such properties would, nevertheless, be qualified to express an opinion with reference to the value of a property as extensive as that of the Spring Valley Water Company: [Quotations are from the Abstract, pp. 1120, et seq.]

(4226) "A person in order to express a reliable opinion upon the value of an existing water works system should have as much knowledge as he can possibly get hold of through the records of the company, his own observation of the company's workings, and the records of other properties. Those two requirements might be met by anybody not a civil engineer. For an engineer to place a value upon a water plant, he ought to have a knowledge of the cost of operating a plant, and the cost of the doing the work, constructing it. He can get that knowledge if he knows how to analyze work, and observe the cost of doing work. (4227) An engineer to get this knowledge must have besides a technical education, judgment, observation, or experience. I think a man would be qualified to express an opinion with reference to the value of a property as extensive as this is, who has had no experience in the construction of such property. (4228) If he had a knowlege of the records of the company; say that he had read through the minutes of that company from the year one down to the present date, that he had read the reports that that company had made to the authorities who had the fixing of that company's rates; that he had read the reports of the officers of the company as to the costs of doing the work; that he has gone over the records; that he has a working knowledge of how the plant was operated, and knew the physical lay of the ground; that he not only knew the cost of that company's doing work, but the cost of any company's doing work in the bay region, and the cost of doing similar work by able engineers along the same line; that he had read up the general principles underlying valuations, and followed court decisions. If he had done that, he would ordinarily, as an

ordinarily qualified man, be competent in my opinion to pass upon and give his idea of the value of the property. I think he ought to know the application of the principles of civil engineering sufficiently to apply them to the problems in question. He has to apply the information he gets from his access to the books to the judgment, and (4229) applying that, would be the element he would gain through his experience as a civil engineer, if he had done some construction, and was able to analyze costs. A man could put in the books that so and so cost so much money, and the man analyzing the costs must have that God-given sense that enables him by an inspection of the property to say that that could not have cost that.

“If an engineer has not had access to the books, to enable him to put a valuation upon this plant, he has to know what it is designed for, how it is operated, and the cost of operating it. He must know the cost of doing work, and the cost of material, and if he has not had the experience himself, it must be from observing the experience of other men who are doing practically similar work. He may not have done the work, but he may have observed the cost of doing it, and be able to analyze it, and be a surer guide than the man who has done it. I do not think it is necessarily important that an engineer placing a value on a plant of this kind should have done any work of the nature of that (4230) involved in the construction of the plant, if he has observed and knows the cost of doing similar work, and has the ability to analyze and to segregate between the cost of material and labor, and the overhead charges, such a man with a knowledge of a very limited piece of construction is more safe to estimate on the cost of work than a man who has done a whole lot of work and who has never kept track of doing it, and did not know whether he was making money or losing it on a particular piece of work.”

* * * * *

(4233) “I am conversant with the cost of doing the work on the east side of the bay, which is similar to the work involved in

the construction of the Spring Valley plant, but I got that information from the records, but if you exclude records, I have no knowledge about the cost of doing work similar to the work involved in the construction of the Spring Valley plant. Cost has to be carried on a record, and I got it from the company's office, their vouchers and bills they paid. If I didn't have any knowledge of that sort I would be handicapped in determining the cost of reproducing this property. I might make an estimate of it, but I would not have that ground of surety which I now possess in handling the subject.

"A man would read proceedings. I read nearly all the testimony in the condemnation under the Metropolis Water Act of 1902, of the eight water companies which the City of London took over. If Mr. Hazen had never read that record, I would not think that a reflection upon his ability as an expert to value this property. I regard it as a qualification of (4234) an engineer to have read that testimony, and it is one of the points in my favor. If his Honor had read it, it would not make him an engineer, but it would give him a broader range of knowledge as to that particular subject. I read the Newburyport case, and the Gloucester case in which Mr. Hazen testified, as I wanted to find out what points were adduced, what was the nature and the method of preparing data, and as to what were the theories and rules of law that governed. I read it in the general investigation of the subject. I read the testimony in the Spot Pond case, in which the cities of Morgan, Medford, and Melrose were involved, having Spot Pond (4235) as a source of water supply. Those were famous cases, and I sent for the record and tried to read up and be posted on them. I read up all the testimony before the Board of Supervisors of the City of San Francisco, by the Spring Valley Water Company from the year one. I read up every record that I could get hold of to throw light on the subject. The principles on valuation have only come in lately, and you will find in 1904 there was very little of it extant in the way of literature. An engineer would read up

the books published on the subject by the American Civil Engineers, and he would read the decisions of the Supreme Court of the United States on rate fixing, because that gives a pretty well defined idea as to what the court expects (4236) shall be investigated in the ascertainment of the value of the property. He would read standard authors, and on valuation he might in the late years read Whitten; he would read Foster. He would read the books that describe the water works, and he would go over those works himself. He would practically make a book by going over the works (4237) himself, and he might read what articles there are descriptive of the works."

* * * * *

(4237) "I think I have read the publications of Mr. Hazen, and I have read as fast as they have come out nearly all the publications on water supply. A man reads those papers, written by prominent engineers, to post himself as to what has been done, for a man is working only in one town, he will never know what is going on in another town, unless he reads about it or hears about it in some way, or sees it. I have not done any work, other than what I have stated, for the past 17 or 18 years, but I have been a pretty fair observer. Whatever I would write would have to be written from the standpoint of experience I have had just as an observer."

Similar comments follow under further cross-examination (4240-4254), but it is unnecessary to quote them here.

And this John Henry Dockweiler is the man whom the city has called as its principal witness, a man confessedly without engineering experience, yet whose testimony the city asks the court to accept as credible and of weight in comparison with the evidence of men of actual experience and conceded ability.

In our opinion, Dockweiler has naively, if unwittingly, branded his own testimony as without weight, and, therefore, unworthy of the court's consideration, except in those rare cases where he pos-

sessed actual and complete records of cost,—and his evidence will be so treated hereafter in this argument.

Randall N. Ellis, competent within his field of experience, and candid, unlike Dockweiler and Dillman, refused to testify upon matters beyond his own personal experience, and his testimony, as for instance upon the question of the fair allowance for excavation, generally gave point to the extremely unfair position taken by the defendant's other witnesses.

The other engineer-witnesses for the defendant are not here referred to, as their testimony was limited to specific subjects, under which it will be discussed.

In the operating field the city called no one of experience. Its principal witness was a partisan accountant with an amazing lack of discrimination between capital and operating charges, whose position was frequently reversed by his own counsel.

In the discussion upon "Fair Rate of Return" but one banker spoke for the defendant. The first two witnesses called by the defendant contributed nothing, the third denied the fairness of the city's contention.

The suits have been thoroughly tried. The character of evidence speaks for itself. In determining the weight to which each portion of it is entitled, we urge upon your Honor that primary consideration must be given to the honesty, experience, and ability of the witness who was responsible for it.

COMPLAINANT'S PROPERTIES USED AND USEFUL IN THE PUBLIC SERVICE.

During the years 1907-1915, complainant was engaged in furnishing water to San Francisco. In that service certain properties were employed. What they were, what service they performed, are preliminary questions the answers to which are indispensable to a determination of the value of complainant's properties devoted to the public service. In this discussion value will not be considered, but rather the properties to be valued.

Broadly speaking, these properties may be described as lands, structures, water rights, working capital, and going concern. We understand the defendant concedes the existence of all the above properties as elements of value except the last. As to whether its contention with regard to going concern will be that there is no such element in a rate case, or that in our case that element has no value, we are not at present advised. We shall doubtless hear from the city on that point in due course. That water rights and working capital should be included in the rating base is conceded; they will be considered later in our argument. The parties are practically agreed as to the structures in use; the differences are of such minor importance that we are entirely willing to leave that issue as Hazen and Metcalf made it. It is to the subject of lands that our attention will now be directed.

Lands in Use.

Plaintiff owns 100,000 acres of land in the City and County of San Francisco, the County of San Mateo, the County of Alameda, and the County of Santa Clara. It claims that of this area there were, during the year 1913, 72,944 acres used and useful in supplying San Francisco with water. The city, however, contends that only 30,834 acres were so used as to be entitled to be considered part of the rating base. The points of difference involve:

- (1) Merced lands, 1,752 acres
- (2) Pleasanton lands, 4,658 “
- (3) Reservoir lands in Arroyo Valle, Calaveras and San Antonio valleys, 2,322 “
- (4) Watershed lands tributary to Sunol and above reservoirs, 32,623 “

There are some small tracts of land in San Mateo County and

in Niles Canyon the use of which is disputed; in San Francisco a portion of the Francisco Street reservoir lot is claimed by the city not to be in use. The evidence with regard to these parcels is clear, however. The city's contention for an elimination is based upon the fact that each of the several parcels is larger than is reasonably necessary for the operating use to which it is put. The answer of the company is that the land in each case was acquired because it was deemed by its officers better policy to buy the tract than to attempt to divide it arbitrarily and be forced to pay the damages resulting from severance, and that in no case has an unreasonable amount been retained. The properties involved are comparatively small, and the determination of this issue we are entirely satisfied to leave with your Honor in the shape it is. We should, however, suggest that the evidence as it now stands shows that the entire Francisco Street lot is in use (11021).

MR. SEARLS: I think we concede that, Mr. Greene. I was under a misapprehension as to the fact that that reservoir was on the lot; I didn't know that it was.

MR. GREENE: Thank you for the concession, Mr. Searls.

It is the four groups of property, referred to above, as to which differences of vital importance exist.

Certain preliminary observations upon this subject may not be out of order:

(1) With the exception of certain of the Pleasanton lands acquired in 1911 and 1912, all of the property here sought to be eliminated has been owned by complainant for many years. Practically all of it was acquired long prior to 1900. It was bought and has been retained as a part of its system for supplying water. It has during all this period been claimed by the company to be, and been treated as, a portion of its property devoted to the public service.

(2) The water developed from these lands, and passing through or over them, has in fact continuously formed a portion of San Francisco's water supply.

(3) In former litigation between the parties to these controversies, all the lands now considered and owned at the time of suit were treated by the city as in use.

(4) They were so treated by the court of which your Honor is an officer.

(5) It is the duty of the City Engineer of San Francisco to advise the Board of Supervisors annually upon such questions as may be raised in connection with the fixing of rates for public utilities by that body. In every year in which such advice was sought and formal reports were made, up to the last year in which a report was rendered, all of the land here sought to be eliminated was included. Take, for instance, that of 1913: The City Engineer—the same engineer, who as a witness in this case, vigorously urges the impropriety of their inclusion—says:

(10719-20) “By Board of Supervisors’ Resolution No. 9968 (New Series) the Board of Public Works is directed to submit to the Board of Supervisors an appraisalment of the properties of the Spring Valley Water Company actually used in furnishing the City and County of San Francisco and the inhabitants thereof a pure and wholesome supply of water for the purpose of enabling the said Board of Supervisors to establish a basis of valuation of said properties, upon which it may fix and determine water rates.”

* * * * *

“The following appraisalment is based upon the recent descision of Judge Farrington in the United States Circuit Court, which fixes the valuation of property in use during the year 1903-04, and the cost of such properties added to the holdings of the Spring Valley Water Company since 1903 as are at present being used in supplying water to the City and County of San Francisco.

“From various reports made by the Spring Valley Water Company to the Board of Supervisors and the reports made by the City Engineer concerning the valuation of said properties for rate fixing purposes, a list has been prepared of all properties pur-

chased or constructed by the Spring Valley Water Company since 1903.

“All of the real estate valued by Judge Farrington in the suit of 1903-04 has been plotted upon a map, to which has been added each separate parcel of land acquired since the date of Judge Farrington’s decision, with an identification number on the plot of each parcel. Using this map as a guide there have been prepared two lists showing the cost and acreage of real estate now in use and the cost and acreage of real estate not now in use in supplying water to the City and County of San Francisco.”

After summarizing the value fixed by Judge Farrington, and subtracting therefrom accrued depreciation, there is deducted property included by Judge Farrington in use but claimed by the City Engineer not to be in use. No mention is made under this heading of any of the property here considered. To the sum thus derived is then added the value of property acquired since the date of the 1903 decision. Included in this addition are the Pleasanton lands the elimination of which is now sought, watershed land in Alameda, which it is now claimed is out of use, and additional properties at Merced of 165 acres, which, together with hundreds of acres of similar land contiguous to it, the city now seeks to exclude. The report thus determines the value of the property reached upon this basis, and continues:

(10723) “For your information there is also attached a list of the cost and acreage of properties added to the holdings of the Spring Valley Water Company since the date of Judge Farrington’s decision but not at present in use.”

In the list referred to, of properties out of use, no reference will be found to any of the lands here discussed. As to this report, the officer who made it now has this to say:

(10684) “In the preparation of the report Mr. Ransom examined all the deeds of the properties acquired by the company since the previous report that were properly chargeable, and also omitted the properties not in use, or the properties that had gone

out of use, and he gave considerable time to examining the lists of those properties. Mr. Ransom always reported the result of his investigations to me before I approved them. He prepared a map showing the properties which were in use, and which were included in the report which he submitted to me. The properties not in use belonging to the company were also the subject of discussion between Mr. Ransom and me. The report specifically set forth the properties which my office considered not in use. I think that Mr. Ransom and I had at least a half dozen conferences on the report, and so far as information was available, I felt before I signed the report that I had all the information necessary to warrant my signing it."

MR. SEARLS: You are reading from the abstract there, aren't you?

MR. GREENE: Yes. I should have said that, Mr. Searls. I have done that very rarely, and in cases where any wrong impressions have been given through its use I shall be glad to make corrections. I have taken long quotations from the abstract to avoid having to read at length.

We are surely doing no injustice to the witness or to the city when we say that in April, 1913, the city's authorities believed all these lands were in use, and that they so treated them.

(6) This is not, however, the last occasion upon which the city was called upon to speak on this subject. It had, later in 1913, decided to institute proceedings in eminent domain to acquire certain properties of complainant, and the City Engineer was directed to designate such properties as might be used and usable in connection with the municipality's proposed mountain supply. The City Engineer thereupon designated all of the property here considered, except a portion of the Merced lands. That elimination we shall discuss later. The same resolution required the City Attorney to institute proceedings in eminent domain, and pursuant thereto the City Attorney filed a complaint in condemnation, verified by the Mayor of the city, in language which stated the allegations

thereof to be true. Among the properties sought to be condemned were, as we have stated, all the lands now claimed not to be in use, with the exception of a portion of the Merced lands. The reason for the inclusion of these properties is thus stated:

“All of the said properties hereinafter in this complaint described have been acquired by said Spring Valley Water Company and its predecessors in interest at sundry times since the year 1858 for the purpose of being devoted to a public use, to wit, the furnishing of a water supply to the City and County of San Francisco and its inhabitants. That ever since the acquisition of said respective properties by said Spring Valley Water Company, or by its predecessors in interest, all of said properties have been and now are used exclusively for the furnishing of a water supply to said City and County of San Francisco and its inhabitants.” (Compl. in Eminent Domain, subd. VII. p. 4.)

This complaint was filed on December 31, 1912. On this subject the various branches of the city government have spoken definitely, often, and on occasions of vital importance. Up to 1914 the city and the company were, as far as this subject is concerned, on common ground. Not only did the city want the property in question, but, as a ground for taking it, it stated that it was, at the time the complaint was filed, actually being used for the very purpose to which the city desired to put it. The point of view thus shown is not that of the so-called public officer alone; it is that of the administrative and legal departments as well. We submit that, even if mistake or inadvertence in the making of its declarations were shown, no court of equity would penalize complainant if it relied upon them as expressions of approval of that particular administrative policy. Was there any mistake? We have not heard from any one other than the City Engineer, but we have his explanation of his official action. He urges that his reports for rate-fixing purposes were made under the compulsion of Judge Farrington's decision; that his best judgment was that the properties were not in use, but that he bowed to a superior

authority. That is his justification for his report. He cannot of course make the same explanation for those reports which preceded his, and we are entitled to accept those at any rate as stating the actual opinion of those who wrote them. Is the present City Engineer entirely accurate in his recollection that he did not, in 1913, consider in use the lands now in controversy? Are the statements in the report itself consistent with that theory? If such had been his state of mind when that report was written, would he have permitted the public, whose representative he was, to suffer without a protest? Would he have suggested that those lands were "actually used in furnishing the City and County of San Francisco and the inhabitants thereof a pure and wholesome supply of water"—

MR. SEARLS: Aren't you quoting—

MR. GREENE: From the report, Mr. O'Shaughnessy's report to the Water Rates Committee.

—that a certain amount, including a value for these controverted properties, was "the value in 1903 of property which is in use today"; that another amount, including an allowance for these same much-discussed lands, was the "total value for rate-fixing purposes of properties owned by the Spring Valley Water Company and in use in supplying water to the City and County of San Francisco," if he actually believed that those properties were not in use? Would he have gone so far as to add a detailed and specific list showing properties not in use, and fail to refer to this large acreage if he had really believed that it was out of use? Was the respect of this city official for the courts so compelling that he felt called upon, not only to conceal from those who relied upon him for advice his true convictions, but also to state to them affirmatively conclusions which he knew were not true? We cannot bring ourselves to believe this. Rather do we believe that the present, with its newly developed issues, has colored the past. We believe that the City Engineer really expressed his views when he wrote his report of April, 1913. We are the more certain we are right

when we consider his actions later in that year in connection with the condemnation proceedings. That complaint was not filed, the segregation of properties was not made, under any compulsion from Judge Farrington. There, at least, the City Engineer was a free agent. Instructed to designate properties used and usable for a mountain supply, he again includes all the properties here discussed, except a portion of the Merced lands. Did he then include the thousands of acres in Alameda County because they would be useable some day? Was he distinguishing between used and usable, or was he looking at the Spring Valley system, and concluding he wanted the full protection which it had built up during its many years of service? Your Honor can answer that question as well as we. When the City Engineer designated Pleasanton, was he assuming that that property was to be useful in the future but was not useful in 1913? What act except the acquisition of more property like it was to increase its utility?

The elimination of Merced is entirely consistent with the treatment of the 1913 report. The City Engineer himself supplies the reason when he says: (10715)

"I did not expect that the Merced Lakes would furnish water for the daily use of San Francisco; due to the inferior character of the water as a water proposition purely, I would not care to incorporate it into a part of our municipal water supply system."

As a reserve supply, to be availed of in case of earthquake or great calamity, the area of land designated by him was, he considered, sufficient. Mr. Hazen agrees with him. As a daily supply the question is, however, entirely different.

We submit that, not only is it the more charitable, but also the more logical, view that the City Engineer, until 1914 at any rate, believed the properties excluded by him in 1916 had been in use.

We are not now contending that because the representatives of the city have at numerous times said that these properties are in use, that your Honor is bound to find that that is the fact. We

are not relying, in other words, upon an absolute estoppel, not because we do not believe that any court of equity would under all the circumstances fail to so treat them, but because the facts themselves show the use to which the properties have been put. We shall now consider the different properties.

Merced:

The great bulk of the Merced properties of the company were acquired in 1871. From time to time small additional parcels were purchased, and the last holding was bought in 1911. Subject to various interruptions, which require no comment here, the supply furnished from Merced has been continuously used as a portion of the water supply of San Francisco from the date of its first acquisition to the present time. It was used during the period of controversy to the limit of its production. The tract itself, as your Honor knows, consists of two lakes comprising approximately 336 acres, besides 2490 acres, of which 2239 are so situated topographically as to drain into the lakes; the water itself comes from springs in the lake bottom and seepage from surrounding lands. It is the claim of the company that the lakes and all other land which drains into them were, during the years in controversy, and are now, property in use in the service of the public. The Pacific slope lands are not claimed to be in use provided the water rights appurtenant to Parcel 25 are otherwise considered.

The utility of the lakes and of a certain arbitrary amount of land upon their border, the total acreage being 811, is conceded by the city, and the point of difference is therefore the inclusion or exclusion of the watershed lands comprising 1764 acres. Your Honor has inspected these properties and is familiar with their location and general characteristics.

We suppose it may be conceded that, as a general principle, it is true that the greater the protection that either stored or flowing water has, and the freer the supply is kept from habitation and possibility of pollution, the more desirable the water

becomes for domestic use. In other words, if there are no other considerations, a clear watershed is preferable to one which is inhabited. This principle has of course underlain the acquisition of nine-tenths of the land acquired by water companies. It was the principle which guided the Spring Valley Water Company in purchasing the Merced Rancho. Lands acquired to protect a supply, and devoted to that purpose, of course come within the category of property in use.

What need do the Merced lands fill: That question is thus answered by Mr. Hazen: [Quotations are from the Abstract, pp. 2420, et seq.]

(8344) "It seems to me that the whole of the 2,575 acres [which excludes the Pacific slope lands] is a necessary part of the land in use for supplying water for domestic purposes, and that no part of that should be allowed to go out of use as long as it is counted a regular source of supply. The object of that land is to protect the quality of the water. If there is any criticism to be made, it is that the company does not own enough; they really ought to own more to fully protect it, but that is what they do own, and with the drainage works and the tunnels, etc., to take care of the drainage that would otherwise go to it, it has been used and is used up to the present time, and it is all right to use it for the present, but the time is coming when it ought to be excluded from the regular supply, and when it does go back into the emergency class, and is excluded from the regular use, then I think most of that land ought to be released and used for other purposes; but for the present, and as long as it is in daily use for domestic purposes, I think every acre of that ought to be held."

* * * * *

(8345) "The idea of including all that land is to protect the supply. The vegetable gardens that are on there no doubt have a slight tendency towards polluting the supply, but that tendency is very much less than having houses built upon it, even with an

adequate sewerage system, because there is so much less human population that goes with it."

* * * * *

(8347) "The protection that is afforded by these outside lands is not against pathological germs so much, as the protection against pathological germs is rather a risk than a transference; that is to say, if you had a very heavy rain that washed the surface, it would wash out whatever dirt there was on the surface, and it might break some of the lines of defense. I don't know that it has done that, but it might do it. I should feel less comfortable using the water, knowing that the population back of those lines of defense was increasing too much."

* * * * *

(8347-8) "If there were any typhoid bacilli washed into those lakes, the period of life in open water is not very long ordinarily, and the fact that typhoid germs had been washed in there might not cause an epidemic, but I should say it was getting pretty close, and I wouldn't want it. It might be that some of the water washing in would be near the intake, or would flow to the intake, and would be drained in, and trouble would come from it. That has happened even in reservoirs and lakes where the storage was large enough so that if it became thoroughly mixed, no trouble would happen, but where the polluted water coming in got near to the intake, trouble has come from it. * * * * as a normal water supply condition, I don't think that ought to be followed."

* * * * *

(8349) "The acquiring of large watershed area around reservoirs has been followed in quite a number of cases. I think that idea has had stronger hold on the Pacific Coast than elsewhere in the United States. Perhaps that has been because it has been possible to get them here, whereas, it was not so possible in the East. A number of Eastern cities have acquired large catchment

areas, and I think of Lynn, and Hartford, Conn. That has not been done in the New York water supply."

* * * * *

(8352) "It might possibly be that there would be no chance of pollution if the Merced Rancho were filled with dwellings, and it had an adequate cast-iron pipe sewer system, but the quality of the water would deteriorate; I don't think it ought to be continued in use that way."

* * * * *

(8498) "I would not quite accept the statement that the typhoid bacillus is the only pathogenic bacillus that you have to look out for in watershed matters. The quality of the water seems to affect the health of the community and the death rate quite outside of the typhoid rate. I don't suppose that the amoeba is an element in the situation here; if it is, I have not heard of it."

* * * * *

(8498) "Of course it is true that you can take straight sewage and sterilize it, and people can drink it and not get typhoid fever, but as a practical water supply business, I don't like to recommend people to use water from an area where there is too much population. I would say that there was too much population on the Merced area now.

"My statement that water draining a region of that kind will carry more nitrogen, and it becomes less desirable for domestic supply, applies to populated regions, but not to unpopulated regions. The nitrogen comes from human fecal matters that get into the soil from the lodgings of cess-pools, for instance. Aside from the possibility of carrying pathogenic bacteria, water supplies drawn from thickly inhabited areas deteriorate materially in quite a number of other ways than from increasing population. On that ground alone I would advise the company to retain the entire area so long as it is used as a source of supply, even if the other was not valid; that is to say, if there were not any risk of transferring pathogenic bacteria."

Hazen thus succinctly states his views in conclusion;

(8500) "I think there is altogether too much population on the part of the Merced area which the company does not own for the good of the supply at the present time. I think if the company had sold off part of it there would have been more population than there is. * * * The more they own, the safer they are."

Before commenting upon this testimony, I wish to quote from the testimony of Metcalf: [Quotations are from the Abstract, pp. 3061, et seq.]

(10347) "With reference to the Merced Ranch, I exclude the parcel at the outlet of the lake, but include the water rights, and I excluded the portion draining into the Pacific Ocean; otherwise I have included all of the Merced Ranch. I hold that it was reasonable and desirable from the company's and the public's point of view for the company to purchase these lands, and protect the purity of the watershed. They have been so used. In spite of the ownership of these lands, the quality of the water in the Merced basins has deteriorated. Increase in population which has come in that region would inevitably bring about that condition. The lands have actually been so used, and it seems to me that in view of those facts, and the fact which I have cited, that the substituted supply would have involved even greater cost, it is reasonable to include them in the reproduction cost estimate."

* * * * *

(10347-8) "I hold the opinion that it will always be desirable to retain a certain portion of the lands about the Merced Lake, with a view to the utilization of the lake in times of necessity as an emergency supply. I am of the opinion that the value to the community is far in excess even of these figures, if it were to be rated on the basis of the protection which it affords, or even on the basis of what might be the increase in insurance rates which might result from the taking away of the Merced Lakes as a possible source of fire supply."

* * * * *

(10348) "There is a very substantial difference, in my opinion, between the necessity for holding the drainage lands in these two cases, first, assuming that that is used purely as a reserve supply in case of a catastrophe like that of 1906, and second, in case a constant use has been made of it during the years 1907 to 1914.

"Even in New York recently, there has been very bitter agitation on the subject of certain public institutions being built upon the watershed at a considerable distance from the source of supply, even admitting that the plans call for proper protection in the shape of satisfactory sewage disposal works. It is possible, for emergency use, to adopt expedients such as the use of hypochlorite, which would make the supply safe. It would be possible for the people to boil their water during the period of use in emergency, but to require the people to boil their water constantly when there was no emergency is unreasonable, and would not be tolerated by the public. Similarly, the use of hypochlorite upon water containing a large amount of organic matter is likely (10349) to leave tastes which are objectionable to the public."

Speaking of the introduction of filtration plants, Metcalf further says: (10353)

"* * * * even with the introduction of such plants, it has been generally considered desirable to maintain the purity of your water so far as practicable before actually filtering it, by the purchase of the watersheds which are tributary to the water supply. As I have stated, the time may come, and in this case I think it has come, where it is no longer reasonable to go to the expense, that is, for an indefinite period of time, of maintaining this supply; it is wiser to seek other sources on that account. The effect of the encroachment of population has already been felt, and it will be felt more certainly as time goes on.

"I should feel that if the lands were built up in proximity to the Merced supply along the lines of the area indicated in the

condemnation proceedings, that the public would not be so safe in the use of the Merced supply as it is today."

* * * * *

(10354) "The increase in the density of population, more particularly up in the direction of Daly City, and on the slopes adjacent to the Merced Lakes, has, in my judgment, increased the organic content of the water. Had I been operating the plant, I would have been fearful that the building up of that district (meaning that excluded by the city) would mean that you would have more children on the lake shores, playing around there, it would have been more difficult to police, and somewhat more expensive, and the presence of workmen incident to the laying out of the roads, and the building of buildings, would have added a hazard. That often is a very serious hazard, too, because you cannot always control their actions."

The reasoning employed by these two engineers clearly has the ring of public protection. It is what we should expect to hear from public authorities themselves. They make safe water the first requirement of a service like this, and refuse to countenance the abandonment of any line of defense. They say that the supply is better, safer, more desirable, with the protection of these drainage lands than without them; that it is invaluable as a reserve, but that in the near future its use as a regular source should be discontinued.

As an abstract proposition, the suggestion would seem to be unanswerable. If the question of value be taken out of the discussion, the desirability of protecting Lake Merced water through the use of this drainage land would seem to be apparent. It is not apparent, however, to the representatives of the city. Its witnesses upon the subject were Dillman and O'Shaughnessy. The former says on his direct examination:

(10831) "The excluded Merced ranch lands are properly excluded. They are not used, nor had they a useful purpose in connection with this water supply. They constitute a very small

area of the watershed. They are not used in a way to lessen pollution, but rather to aggravate it, and while some use might be considered to be more detrimental to the purity of the water, in my opinion the lands used for residential purposes, if proper sanitation surrounded the buildings, would not be as detrimental as the present use for farming purposes with the great amount of land manure that is annually hauled there."

In other words, the contention is that the Merced lands are so small in relative area to the entire drainage area as not to afford protection; second, that they are not so used as to protect the supply because of the farming operations permitted on them, and third, that they would afford just as adequate protection if inhabited as they did from 1907 to 1915, when uninhabited. On his cross-examination Dillman answered the first statement thus:

(10905) "Q. By the way, you have stated that the lands owned by the Spring Valley Water Company constituted a comparatively small portion of the watershed drainage of the lake? A. Yes.

"Q. Who told you that? A. That is shown by the map.

"Q. Show it to us on the map, 'Exhibit 206'?

"A. This shows the Merced lands and this broken line the drainage area into the lake.

"Q. You would say that the portion of the lands in yellow and red there was only a small area of that included in that exterior boundary?

"A. It is larger than I thought it was when I made that statement; at the same time it does not include half of the land from which the water drains into the lake, and that portion outside of Lake Merced is a much more thickly populated part of the drainage area than that inside."

It would seem entirely evident that, in Dillman's opinion, the retention of this land by the company had preserved half of the drainage area from a policy to which he took particular exception.

The second point, that of pollution, is thus discussed by him on his cross-examination:

(10904) "Q. How near to the lake does the manure area reach; I am speaking of 1914 now and earlier?

"A. Quite a distance.

"Q. How far? A. Probably half a mile.

"Q. Would you say it came within half a mile? A. I don't know that it does.

"Q. Haven't you made that statement in your report solely and only upon what someone else has told you and without any personal knowledge of the subject at all?

"A. As regards the pollution it is a matter of hearsay, that the waters now are a little more polluted than they were two or three years ago; that is a matter of hearsay; it seems perfectly reasonable that is so because of my knowledge of the porous nature of that soil."

* * * * *

(10922) "Q. And yet you say the deposit of manure upon that land has resulted in polluting the water?

"A. I get that on information of analysis. I have not made an analysis.

"Q. What analysis have you seen that indicates that?

"A. This is simply a statement; I think I got that from the City Engineer.

"Q. What was the statement that you got from the City Engineer?

(10923) "A. That the analysis of water shows a higher chlorine contents than it did before the farming was commenced on a larger scale.

"Q. It would be interesting to us to have those analyses, that is, the dates on which they were made particularly; do you know when they were made? A. No.

"Q. Do you know when the samples were taken? A. No, not definitely; they ought to be taken all the time; the Spring Valley Water Company ought to have them.

"Q. You have made the statement here that this water was

polluted, haven't you? A. I have given you the basis of that statement; that is simply hearsay on my part; I have not discovered personally any pollution.

"Q. How much more chlorine did you find was in the water after the land had been used for agricultural purposes than before?

"A. I have no figures; I did not find anything."

As to the third point, that the lands would afford just as adequate protection as they did when uninhabited, Dillman says: (10906)

"Q. Now, would the situation have been any worse in your opinion if the portion of that drainage area owned by the Spring Valley Water Company had been thickly populated?

"A. It probably would be just as safe as it is in Spring Valley ownership.

"Q. It would be just as safe? A. No."

There is here an excellent illustration of Dillman's willingness to testify on a subject which he was too lazy to investigate. It is clear that practically half the drainage area is controlled by the company; that Dillman does not know of any actual pollution during the years in controversy, and that he would prefer to have the watershed free of habitation rather than built upon. As far as engineering principles are concerned, he apparently does not differ greatly from Hazen and Metcalf. His opinion was based on assumptions made by him without foundation. He did, however, raise the issue of pollution due to farming operations, which we shall bear in mind.

O'Shaughnessy was referred to by Dillman as the source of his information, and it is to his testimony that we now turn. Before proceeding, we should remind the court that Mr. Metcalf, in the early part of his examination, had said that he assumed that the organic content of the Merced water had increased. That assumption, which he later showed to have been incorrect, becomes a very material element in O'Shaughnessy's testimony.

Upon his direct examination, O'Shaughnessy has this to say:

(10503) "I have been familiar with Lake Merced and surroundings nearly 30 years, and believe, for purposes of water supply and sanitary protection of same, that the 811.13 acres indicated on the exhibit provides an ample margin for water supply purposes. This area includes 336 acres submerged at the ordinary levels of the lake. * * * * I am familiar with the use of the lands, this 811 acres, for much of the period 1907 to 1915, the years in which the rate matters were in controversy. This land has been principally used for agricultural purposes, but I believe the near future uses will be for suburban residences like Ingleside Terraces and St. Francis Wood, for which this property is well adapted. I believe that the future use for this purpose will demand no heavier sanitary requirements than those heretofore utilized for protecting the water supply. (10504) * * * * It is not the custom or practice in waterworks supply to hold immense areas of land, especially inside the city limits, under the pretext of water protection."

* * * * *

"Q. Now, it has been testified here that the organic contents of the Lake Merced water was increased during the last two years, and it has been suggested that that increase was due to the increase in population on the watershed. I would like to ask your opinion as to the cause of this increase, assuming that the water tests show that it is a fact?

"A. I would say positively it is not from increase of watershed population. It is from the manner in which this land surrounding the lake is used for farming purposes, in which large volumes of both horse and stable manure are placed on the ground for fertilization, and in that way there must be some infiltration of the manure contents into the lake, which would account for its inferior sanitary quality.

"Q. From your knowledge of the topography of the Lake Merced land, and of the conditions of the populated area in that

vicinity during the years from 1907 to 1915, what would you say as to the possibility of contamination of the water, if the Spring Valley Water Company had reserved for its own use only that portion which is marked red on the map, and had excluded or sold off or otherwise disposed of the portion which is marked in yellow on the map?

(10505) "A. I believe the character of the water would be no worse.

"Q. My question went to the possibility of contamination: In your opinion would there have been danger that the water would have been contaminated?

"A. No more danger than under the present uses; in fact, a lesser danger, because the only other uses besides farming purposes, that the land could be put to are uses for building purposes, and in building purposes, nobody may build a building in San Francisco except that proper arrangements are made for sewage, so that all matter resulting from building purposes will be removed from the lake, and there would be no chance of its reaching there."

In a matter of such considerable moment as this, it is of course interesting to know upon what basis the segregation of 811 acres retained by Mr. O'Shaughnessy was made. It appears that on February 24, 1913, the Board of Supervisors adopted the following resolution, requiring the City Engineer to describe that portion of the Spring Valley Water Company properties necessary to be taken in connection with a Sierra supply:

(10686) "Be It Further Resolved: that the City Engineer be directed to include in this list only those properties which are economically and scientifically available for the use of said City and County of San Francisco and in its acquisition of a municipal water supply, and exclude therefrom all properties, water rights, etc., which are not economically valuable or usable as adjuncts to a Sierra supply."

In answering this resolution, which by the way was passed

more than six weeks prior to the making of the April, 1913, report on rates, O'Shaughnessy, for the first time, reached his 811 acres. The determination of the question, he tells the Board of Supervisors, was "the most complex problem in connection with this work." He discusses the question at page 10729 of the transcript:

"Q. What was there about that Lake Merced situation that rendered the problem complex?

"A. The main reason was the financial reason, the desirability of excluding as much valuable land as possible that was of no value as a water supply from the purchase price of the city.

"THE MASTER: Q. I understand by that, Mr. O'Shaughnessy, the question of striking a balance between the desirability of having a protective area and the large cost of that protective area?

"A. That was practically the problem, your Honor, and then, again, I thought and afterwards proved that by making this boulevard and road as I suggested, the protective work could be accomplished in a very simple manner."

* * * * *

(10714) "Before I made any investigation I thought a thousand acres would have been the proper amount to reserve around the lake."

* * * * *

(10716) "It was a matter of the greatest importance that it should be uncontaminated, and that is why I made those provisions for a boulevard and drainage, and the exclusion of cultivation and intensified farming inside this area."

O'Shaughnessy's recommendation that a restriction must be imposed by which no buildings could ever be constructed within 150 feet of the center line of the proposed boulevard will be recalled. He selected the 811 acres of Merced land as the amount which he considered it financially expedient for the city to pay for Lake Merced as a reserve supply, to be used only in case of earthquake or great emergency, and that he would not consider—

at any rate when the report was made—a continued use of this source of supply for the citizens of San Francisco. It is interesting to note at this point that O'Shaughnessy's results coincide exactly with Hazen's, the latter saying that for a reserve supply the area designated by O'Shaughnessy would, with the addition of suitable facilities for filtration, be sufficient.

O'Shaughnessy, however, applies the acreage thus determined, and with this particular purpose in view, to the years in the past during which this supply has been in daily use. He feels no greater concern over the purity of water held in reserve than over that required for daily use. O'Shaughnessy had known the Merced lands and their use for more than 30 years. He had, long prior to 1890, attempted to secure the privilege of using a portion of them and had been denied, and during all the years which followed he had kept in close touch with the Spring Valley situation, until he acquired his very intimate knowledge following his accession to office as City Engineer. He claims to have known the lands well during all this period, during a portion of which he was employed by the company. It is quite clear that, during that period and up until the time the farming operations were commenced upon the property, O'Shaughnessy considered all of the Merced properties as in use. It was the use of the lands for agricultural purposes which caused the change of front.

(10716) "I considered the exclusion of the farming operations quite vital, and I considered it quite vital to impose restrictions upon the construction of buildings upon the remaining portions of the Lake Merced property. I considered it important to impose as a condition the construction of a boulevard 80 feet wide. None of those things were in contemplation or existed when I made my report on the 19th of April, 1913, as an aid to the Board of Supervisors in fixing water rates. The situation which I was dealing with when I made my report on the 19th of April, 1913, was an entirely different situation from that with which I was dealing when I made my report on November 19, 1913."

And again, at 10717, "Judge Farrington passed on the question of all these lands tributary to the lakes, and we did not raise the question as to any segregation, so I believe we had justifiable grounds for doing so, because at the date of Judge Farrington's decision I don't believe those lands were in farming use. They were being used for farming purposes on the 19th of April, 1913, when I made my report, and I was very familiar with that use. I was in the habit of going on the property frequently about that time, and I was making at least weekly visits to it, and with the time at my disposal, I was very familiar with it."

* * * * *

(10729-30) "MR. McCUTCHEN: Q. You knew, did you not, Mr. O'Shaughnessy, that prior to the making of that report of April 19, 1913, the office of the City Engineer had always treated that Lake Merced property as property in use for supplying San Francisco with water?

"A. From looking over the previous reports, I saw that was the fact.

"Q. That is to say, that was the case long before Judge Farrington rendered his opinion?

"A. In those very early days, the lands were entirely exclusively used for protective purposes; there were no farming operations conducted on them."

* * * * *

"Q. It was your understanding that up to the time these properties were used to some extent for agricultural purposes, they had, during their ownership by the company, been used exclusively for the purpose of protecting that water supply?

"A. I should say that was the case.

"Q. And nothing, so far as you know, had occurred to affect or change that exclusive use, except the use of the property for agricultural purposes to the extent to which it was used for agricultural purposes?

"A. That is the only exterior influence I observed."

* * * * *

(10788) "Q. Mr. O'Shaughnessy, you say you have looked over the reports of your office to the Board of Supervisors, made to that board for its information in rate-fixing proceedings for many years before you became City Engineer; you discovered, did you not, that all of those reports treated all of the Lake Merced lands of the Spring Valley Water Company as in use for the purpose of supplying San Francisco and its inhabitants with water?

"A. That is correct.

"Q. When did you first become familiar with the fact that some of the Lake Merced lands were being used for intensified farming—to employ your own words?

"A. I think in the fall of 1912.

"Q. At any rate, you knew that before you made your report of April, 1913? A. I did.

"Q. That was entirely familiar to you at the date of that report; and you also knew at that time, as I understand you, that all of the income which the company derived from such use of the lands went into its general treasury, and to employ the answer that you made yesterday, you also knew that the consumers were getting the benefit of that income?

"A. That is right.

"Q. If you considered that so objectionable, why was it when you made this report and when you appeared before the Board of Supervisors as a witness to sustain your report, that you did not recommend that the company be given some compensation that would relieve those lands from the agricultural use to which they were being put?

"A. I did not notice the aggravated condition of the lake supply until a later date, due to the influence of this farming.

"Q. When did you notice that? A. I think I noticed that in 1914.

"Q. What directed your attention to it then?

"A. The filthy condition of the water in the north lake."

* * * * *

(10792) "Q. Then in 1890, when you wanted to build the race track, the lands were in use for water-producing purposes?

"A. They were considered to be in use for that purpose.

"Q. By whom? A. By the managers of the company at that time.

"Q. And by the city? A. And I believe by the city.

"Q. And by you? A. I had nothing official to do with it.

"Q. I understand that, but from your general understanding?

"A. From my understanding.

"Q. That is to say, that understanding came from the quite intimate familiarity which you had with that property, and which you have heretofore spoken of?

"A. The actual contact with the proposition of polluting the ground in the vicinity of the lakes."

* * * * *

(10793) "Q. By water protection, or by protective purposes, you understand that it was meant the maintenance of the purity of the runoff from those lands?

"A. I meant a sanitary protection of the lake water.

"Q. And to that extent, at any rate, they were in use in 1890 for water-producing purposes?

"A. To that extent they were so operated."

There are other similar expressions, but the point of view is evident. What O'Shaughnessy calls the "filthy condition" of the water, due to farming operations, is clearly one reason for the elimination of these lands by him. Let us consider this question first.

Metcalf had testified, as we suggested earlier in our argument, that he assumed, on account of the increase in population, there had been some increase in organic content. He had not at that time the actual chemical analyses. Bearing this statement in mind, note the form of counsel's question at page 10504:

"I would like to ask your opinion as to the cause of this increase, assuming that the water tests show that it is a fact." We

search O'Shaughnessy's testimony in vain to find any positive statement on his part that there has been in fact an increase in the organic content. We do not know whether or not O'Shaughnessy knew what the analyses showed, but it is evident that he accepted Metcalf's suggestion and made it the most conspicuous part of his prosecution of Merced. Later in the case, when this question had become an important issue, it was, however, definitely determined. Not only was there introduced, through the general manager of the company, a letter from Dr. Rupert Blue, advising the company that farming operations would not in his opinion be detrimental provided precautions suggested by him were observed, but the actual analyses of the water, made at intervals of a few weeks, are in the record. These analyses, introduced through Mr. Metcalf—and he stated that he introduced all of which he could find record—show that in fact there has been no increase of organic content during the last ten years. I shall not take the time to review that evidence, but there is not a scintilla of testimony to the contrary. We shall therefore dismiss finally the suggestion that farming operations have resulted in an appreciable increase of organic content in Lake Merced.

May we ask your Honor, however, to view the question from another angle? O'Shaughnessy claimed that the result of farming operations had been filthy water in Merced. It was shown by Exhibit No. 217, introduced through Mr. Eastman, that during the entire rating period from 1907 to 1915, 3 acres out of the 811 designated by O'Shaughnessy were cultivated. On O'Shaughnessy's theory, then, that there had been pollution resulting from agricultural use, that pollution was necessarily traceable to the use of the lands outside of the 811 acres; and it necessarily follows from his own basis of reasoning, that the use of the remainder of the Merced lands had a decided effect on the water, that is, that it made hitherto clear water in Merced "filthy." Since O'Shaughnessy places the use of that property for residence purposes on the same plane as that for farming, it is not unreasonable

to conclude that he must think that there would be a substantial pollution of the existing supply from the use of the property for residential purposes. O'Shaughnessy practically concedes that, but answers it with reliance upon a premise which we have shown to be false, namely, that the agricultural use was responsible for an increase in the organic content. We make this suggestion because it shows, to our minds, that the City Engineer did not make either a thorough or a fair investigation of the results of the farming operations.

When, however, those of us who were listening to Mr. O'Shaughnessy discuss this subject for the first time were beginning to feel that we understood his argument, your Honor asked the witness a question the answer to which left us in uncertainty. Mr. Searls had objected to a question put by Mr. McCutchen to Mr. O'Shaughnessy, and your Honor had ruled upon the objection, saying :

(10799-10800) "I understand, Mr. O'Shaughnessy, for instance, take the year 1914, for example, and assume that it was all wild flowers, without any human habitation or occupation other than the keeper's place, in other words in a condition comparable to the watershed down at Pilarcitos, for example, I understand from what you have said, that under those circumstances you would likewise exclude from the property in use everything outside of the 800 odd acres that you have referred to?

"A. That is correct.

"Q. And if at that time the company had sold off all of that outside acreage it could not be criticised for so doing in line with its duty to keep the water supply in good shape?

"A. That is also correct."

If O'Shaughnessy meant what he here says, the character of use to which the disputed acreage is put has no bearing upon the question at all. Pollution, in his opinion, either cannot result from any use to which that acreage may be put, or, if it does re-

sult, is of such insufficient importance as not to merit recognition. Of course he himself claims that it has resulted because of the use to which this land has been put. Accepting this statement at its face value, however, it is obvious that the reasons here advanced by him for the elimination are not that the lands are very valuable, or that for the company to carry them will result in a burden to the rate-payers, not that they have been so used as to negative their natural capacity for protection, but that they do not, no matter how they are used, protect. He says, in effect, that he would not want them for protective purposes even if they could be obtained for nothing. This is O'Shaughnessy's professional opinion. Your Honor will have to give it such weight as you may think it is entitled to. To us it seems incredible that anyone familiar with the problems of a public water supply, whether from an operating, engineering, or legal point of view, would not prefer to have the protection of the Merced drainage area if he could have it within the limits of reasonable cost.

To sum up: This acreage has all been retained by the company during the eight-year period. No use has been made of it so as to increase pollution; there is evidence of the city's own health department on that point. It has been the consistent judgment of the engineering authorities of the city, and of the present City Engineer, until nearly the end of the eight-year period, that it was property in use. Does not all the evidence clearly indicate the soundness of Hazen's and Metcalf's judgment that these lands were in active and useful public service during the entire eight-year rating period?

Pleasanton:

The company owns 5610 acres of land at Pleasanton, of which 952 acres were acquired prior to 1903, and the remainder, 4658 acres, in 1911 and 1912. It is contended that of this total acreage only 967 acres should be included in the rating base in these cases. The question as to the serviceability of these lands is closely interwoven with the question of water rights, and we shall only indi-

cate here the general reasons for and against their inclusion, as a part of the company's used and useful property, leaving to the discussion of water rights the more detailed examination.

With the general topographic situation your Honor is familiar. Herrmann thus describes them: [quotations are from Abstract, p. 2637]

(8980) "The geological and topographical condition in the Livermore Valley are unique by reason of the fact that there is that great fault line that passes through the Calaveras Valley, and through the upper reaches of the Laguna, and across into San Ramon, and that country, whereby the territory to the east of it has dropped and filled with gravel, so that the geologists tell us that there is there a gravel reservoir to a depth of something from 2,000 to 4,000 feet. That is quite different from most underground supplies. It is, in fact, a cup or reservoir that has been created by nature, and has been filled with gravel, and the interstices between these gravels furnish the storage capacity of that cup. The fault, with reference to the pump, is west; it follows the scarp that is just to the east of Mrs. Hearst's home at the foot of the hills there.

"Beginning with the fault line on the west, this underground reservoir covers the valley floor to a greater or less extent, traveling eastward to a territory in the neighborhood of Livermore, and up the Arroyo Valle to the place where the Arroyo Valle Creek debouches from the hill. * * * The north boundary is in the neighborhood of that fringe of hills on the opposite side of Livermore Valley. The gravel slopes westward. Part of it in the western end has more or less of a clay cover. It is commonly called a clay cap, although it is not continuous."

The Spring Valley pumps are so located as to get the greatest supply possible in the valley, and any draft made through their use first affects the lands on which they are located and then, in a diminishing degree, the lands farther east. On the lands that the company owned up to 1909, one pump had been located, the

draft on which was a number of million gallons per day. In 1911, the company was facing the necessity of a further development. The demand for additional water in San Francisco was insistent. Prior to that time some of the Alameda supply, as we have said, came from Pleasanton, but it was clear that the full possibilities of that location had by no means been availed of. It was determined by the company that it was to that source that it must go, not only because of its availability, but also because of its ready development. To take more water from this source meant not only the appropriation of water in a running stream, but the depletion of a natural reservoir the waters of which were used to a greater or less extent by those who owned the surface lands. The company had had experience in acquiring other properties in the same neighborhood. It had confronted serious litigation conducted by those who were fully aware of their rights, and able to fight for them. It knew that any attempt to purchase, meant paying for the rights obtained practically the value of the entire land under which the water lay. It likewise wished to avoid the risk of a prolonged controversy in the courts. It believed in good faith that the only way to avoid litigation and the consequent tying up of this property for a considerable period, lay in the purchase of the land. The question had to be decided, and, as we have said, it was deemed inadvisable to attempt either to condemn or to buy the rights alone, which the company required as against the property. Mr. McCutchen, the attorney for the company at that time, thus stated the situation:

(10982) "The matter of condemnation was the subject of discussion to some extent, but it was the consensus of opinion that that would have been a very ill-advised course for the company to pursue; we felt that the effort to take that water right separate and apart from the land itself would probably result in the company being compelled to pay substantially what the land was worth.

Regarding the same situation, Mr. Eastman says: [quotations are from the Abstract, pp. 3243; 3251-2; 3256;]

(10942) "More water was needed in the city, and that was the most available place to get the water in time; that is, we had structures from Pleasanton to San Francisco that would carry more water, especially during the summer time when the greatest quantities are needed. Immediately after the acquisition of these lands the amount of water taken from Pleasanton was increased, and has been increased annually since that date. After the acquisition of these three large parcels it was decided to acquire other lands that were over the subterranean body of water. In 1912 the acquisition of these lands was started, and carried on continuously, until the holdings were substantially the same as they are today. The purpose of acquiring the second aggregation of holdings was in order to increase the daily draft of water for the city, as well as to provide for future development in excess of what we are now taking."

* * * * *

(10965) "With regard to the Pleasanton properties, my point of view is that the old holdings of approximately 1,000 acres in Livermore Valley and the Arroyo Valle were a strategic start at getting control of the water of the valley, but it was not by any means in the nature of a strong position. We could very easily have been made the subject of adverse diversion. It had always been the intention of the company to acquire further lands in order to get further quantities of water, and it was in line of that further policy that the land and holdings of the company were extended for the purpose of covering as far as possible the underground reservoirs. That group of purchases was concluded in about 1912, and the aim was to cover the underground reservoirs."

* * * * *

(10967) "In acquiring the lands that the company now has, the purpose was to acquire such a strong position that it could

bring about a reasonable settlement with any other land owners in the Livermore Valley who might really be affected by withdrawals. To bring about all conditions necessary to the complete development of this project, unless we had these properties, in my judgment, we could not deal with these people; we could not bring about the complete development so economically as we could by virtue of the position which we now hold. At the present time we are negotiating with the Pleasanton Township Water District, and the directors of that district and the company have agreed on practically all of the details necessary to bring about conditions that will permit of this total development. Had the company sold the lands after acquisition, ex-water rights, we could not, in my opinion, have completed these negotiations with the Livermore Valley people, which would have permitted the basis for the complete development of the lands; in other words, the ownership of the lands will serve as a valuable adjunct in bringing about the acquisition of further rights if necessary to a very much larger development than we could have counted on prior to their possession. When all of the rights have been secured by virtue of the position of the company in owning the lands there, it would be in order, and in fact is the policy of the company, to sell what lands it can consistently with the development of water, and in which case the sale of the lands will be a credit on the lands in use for the city."

* * * * *

(10980) "Immediately on the acquisition of these lands, larger equipment was installed at Pleasanton that permitted of a greater draft; a greater draft was made."

It is fair to say, then, that the land in question covers a considerable portion of an underground reservoir; that the company's ownership enables it not only to take the natural flow, but to also take such storage as may be underlying. These two rights are distinct and not to be confused. It is further accurate to say that when in 1911 the company foresaw the necessity of a further

development, it was the opinion of those in charge of operation that the most feasible field was Pleasanton; that the most feasible method of developing Pleasanton was the acquisition of the lands actually bought; that there was no time for controversy and extended construction work, and that the plan pursued resulted in obtaining the needed water.

The city's contention on this point is that it was unnecessary to buy the lands, that the acquisition of the water rights alone would have been sufficient, and that this would have materially lessened the company's investment. If by the term "water rights" as employed by the city's experts, is meant, not only the right to withdraw the amount naturally flowing from Pleasanton down Laguna Creek, but also the right to lower the water-plane throughout that district, as well as such protection against any surface pollution as ownership gives, we may well concede that if such complete rights had been obtainable they would have answered the company's purpose as well as the actual ownership of the entire tract.

Should the company have pursued that course? Mr. Eastman, who has passed through the experience of dealing with the actual problem, and Hazen and Metcalf, who have covered the same ground in other cases, all consider that the course followed by the company was not only the prudent one to pursue in view of the insistent and pressing need for water, but the more economical financially. Hazen says: [quotations are from the Abstract, pp. 2441-2; 2488-9]

(8401) "The Pleasanton Wells lands, or the lands on which the Pleasanton Wells are located, and which are immediately necessary for the operation of that property, the Pleasanton Tract comprises 4658 acres above the Pleasanton lands. That land I understand was bought to prevent the litigation or injunction from the owners of that land, who would be damaged by having the water-table lowered under their property; it has been commonly found in supplies of this kind that property on underground reservoirs like this is affected for a considerable distance

and the people who carry on a supply of that kind either have to buy the land or pay the damages they inflict on the property owners.

“In this case I take it that Spring Valley thought it was better to buy the land than to stand the litigation and pay the damages, and they bought it. They own it and it is used and it produces certain revenue. As long as it is held I think that revenue ought to be taken into account in making up the operating account of the company. The ownership of this land in a certain way is related to water rights, but it is related to water rights in a different way from the lower land. As far as this land is concerned its ownership gives the water company the opportunity to lower the water-table and utilize the underground storage; in other words, it gives it what we may call a reservoir right back of the wells. It does not give it any right to divert water as against the lower owners and does not make any difference with respect to those.

“So it is separated entirely from the right to divert which I think is more ordinarily considered as the water right; in other words, the company had to settle with all the people down stream just as if this Pleasanton affair did not exist, and in addition had to settle with the people who owned the land above their wells for lowering the water-table temporarily, and that without regard to the diversion of water lower down.”

* * * * *

(8402) “As to whether the company should acquire the rest of the Livermore Valley, it is a question as to how far the damages extend, and what trouble adverse ownership of the land can make for the company. I take this as an expression of actual experience so far, but what the experience will be in the future, I will not undertake to predict. It did not give them control of the water so far as trouble with owners further up the valley is concerned, but the depression of the water-table is much greater in the neighborhood of the wells, and immediately up the valley from

the wells, and I think that this tract covers that part of the Livermore Valley where the claim for damages would be greatest, and could be best substantiated. I don't think I can tell whether the land is very much damaged by the company's pumping to date, from looking at it, but I know from experience in other cases that the land looks perfectly good, and people have recovered very large damages, or have obtained injunctions. The first time I saw that land it was covered with hops, and it was a beautiful sight. It seems to me the question is not how much the land is damaged, the question is how much the company was, or might have been damaged by the litigation.

(8403) "It has been pretty nearly my experience in those matters that the company would absolutely have to pay the value of the land in damages if it condemned merely the water rights. I don't think that I have had any experience that involves the acquisition of a single tract of the size under just these circumstances of pumping. I have had experience in other cases where the area involved was as great as this, but held by a good many different owners. That land was held in diverse ownership when they were acquired.

"Every man who is in the area in which the ground water is lowered will bring his action; they will get together; they will be well represented, and they will get all the damages that are coming. The jury will take into account not only the damages which have existed up to the time, but the future damages. The company does not want to pay for the damages for the past six years, within the statute of limitations, and be subject to further suits from time to time. They will take the water, and that gives them a right to it in the future; the jury has to deal, not only with damages that have actually accrued, but with all those that may accrue. My experience is that the damages run pretty high in these cases."

* * * * *

(8546-8547) "The value which I attach to the water rights

which are represented by the Pleasanton lands is in effect the value attaching to stored waters, or to a reservoir of water. If it were not for this gravel deposit which the company is utilizing for a reservoir, it would have had to build an artificial reservoir to accomplish the same purpose, and buying this land and building the works to depress the water-plane and use it, really takes the place of the construction of a big artificial reservoir. It may be that if the company only bought a portion of the land overlying the gravels, and did not buy the rest, that it is not a complete right as against the owners to the east of Pleasanton. As far as it has not, it will have to deal with the owners in the future as occasion arises."

Mr. Metcalf has this to say upon the subject of the Pleasanton lands: [quotations are from the Abstract, pp. 3069-71;]

(10373) "With reference to the situation at Pleasanton, I have been influenced in a measure by the conditions with which the company was face to face. The company was facing low-water conditions, with a danger of shortage; it was the most reasonable source from which to get additional supply, and at comparatively small expense, and the ultimate development of the Pleasanton gravels bade fair to be advantageous, and will be advantageous in years to come as a source of supply, particularly to carry the company over the times of extreme drought, and the peak loads which it has to carry. The company was, at that time, facing suit following the lowering of the ground water-table in that region, and it was desirable for it to purchase the lands necessary for it to control the situation, and having purchased the lands for that purpose, it seems to me reasonable that they should be included in the reproduction cost, and in the rating base. As a matter of policy it is reasonable, and it should be possible to resell those lands when arrangements have been effected in this region with the property owners who will be most seriously affected by the lowering of the ground water-table in this valley, but I doubt if the company could advantageously have sold the lands imme-

diately after purchase ex-rights, and it seems to me that it pursued the natural course in holding the lands until the negotiations which are now pending had been finally carried through."

* * * * *

(10376) "I regard the advantage to the company of actually being able to utilize this big gravel basin in the same way as you would a surface reservoir, only as an underground reservoir, as (10377) of great importance to the company. If the company had gone to the owners, and had bought the water rights, covering the right to deplete the storage reservoir in any way that might have proven desirable in later years, there would have been exactly the same situation as there is here. I have been looking upon it as implying not only that the company was getting the right to the water which would otherwise have found its way into the stream by the overflow of this cup, so to speak, but also the right to actually lower the level of the water in the cup so that it could utilize the storage capacity of the gravels. If the water right does not cover that, then it would not be the same condition as it is here; in other words, I assume that the right to the water which would have overflowed (10378) the lip of the cup, whether it came down through a pipe, or through a stream, could have been exercised at Sunol. The right, on the other hand, to deplete the storage below the level of the lip could not have been exercised at Sunol."

* * * * *

(10381) "My feeling about whether you could have an underground water right without utilizing the storage was that whatever name you call it by, it was desirable for the company, facing the situation that it was, to be able to get water by lowering the ground water level within these storage gravels, and in my judgment, it will be desirable in increasing measure with the lapse of time for the company to be able to utilize the underground storage of those gravels; it will tend toward conservation of the water because the evaporation, amongst other things, will be less. Had the company done that, it seems to me it would have been liable

to damage suits; it would have had to pay either for the lands, or for damage done, in order to be able to extract the water in that way. The ability to do that, of course, enables the company to divert a larger percentage of the storm run-off, because of the fact that the storage lands would be replenished during the wet seasons which might follow. It seems to me in a situation of this sort that reasonable latitude should be allowed a corporation."

We should further add that the policy of the company as outlined by Eastman (10942-3; 10984) is to rent these lands upon the best terms possible, consistent with the continued purity of the supply; the use of the lands for the highest agricultural purposes is aimed at and the entire income therefrom is included in operating income.

Let us now examine the city's contention. Dillman says: [quotations are from the Abstract, pp. 3211-12; 3239]

(10835) "The Pleasanton Ranch lands are excluded for the reason that that portion of the value of the Pleasanton Ranch lands which is ascribable to water rights has been valued separately by Mr. Lee, and included in the water right valuation. I find no utility beyond this right in the lands in supplying San Francisco with water. There was no justification in the original purchase of the land from a water supply standpoint when the company had the right to condemn the water rights separately, although it may have been good business to do so from the standpoint of a real estate investment."

And, again, on cross-examination:

(10927) "At the time the company purchased the Pleasanton Ranch lands, I know only from hearsay that they were threatened with a lawsuit for lowering the water-plane, and they probably did the best thing that was to be done, bought the lands and stopped the lawsuits. That was the cheapest way to get that water right, in my opinion. I approve that purchase. It was good business, and then the lands could be immediately alienated for farming purposes, and in that way the water right would

probably cost much less than to get it direct. I think the purchase of these lands, with the intention of alienating the land as not being pertinent in any other sense, is good business."

The company's course of conduct has, then, the clear approval of Dillman, and the only difference between him and the company's witnesses involves the immediate resale, ex-water rights, of the lands acquired. The reason for the retention Eastman has explained. The necessity for acquiring further rights, as yet in private ownership, the strategic value which the company acquires from ownership of the lands actually bought and needed for a future settlement and a troubled situation, the present negotiations actually being carried on in good faith between land owners and the company are, it is submitted, a sufficient answer to Dillman's suggestion. Questions of the type here under consideration, even when made under the most favorable circumstances, are matters of delicacy and sound business judgment. The company knew the situation; Dillman did not. He did not in fact know even of the past difficulties until they were stated by the company's witnesses in this case.

O'Shaughnessy also testified upon this subject. It was developed upon his examination, as we have already noted, that as in the case of Merced, so with Pleasanton, all of the land owned by the company from the date of its acquisition to the latest report made by his office, was included as property used and useful. The deeds were carefully examined by his assistants prior to the making of each report; the lands acquired were not only treated as in use but were specifically stated in the report to have been in use.

This is true, not only of the lands considered by Judge Farrington, which the company owned in Alameda County, but also directly and explicitly of the properties acquired since the rendition of Judge Farrington's opinion. The lands considered in the latter opinion O'Shaughnessy still treats as in use. The ranch lands were new acquisitions, and he cannot hide behind Judge

Farrington's opinion in justifying their inclusion in 1913 and their exclusion in 1916. It was also developed that when O'Shaughnessy was requested by the board of supervisors to, and actually did, designate the lands necessarily to be acquired for San Francisco's water supply, all of these Pleasanton lands were included and it was not until his testimony was given in this suit that his opinion was reversed and a position was assumed exactly opposite to that previously taken. We shall not go into the question of O'Shaughnessy's testimony at great length because we think it is plain that even with his changed attitude his only reason for the elimination of the Pleasanton lands is that they do not at present produce as much water as he thinks they should.

(10739) "The quantity of the yield might have influenced me in determining whether they were in use or not at that date."

Referring to various reports and his earlier desire to acquire these lands for the city, O'Shaughnessy says: [quotations are from the Abstract, pp. 3189-90]

(10744) "At the time I made this report, I thought that the experts were exaggerating a great deal in stating that you could take 72 million gallons a day out of that [underground] reservoir. I thought we could take out possibly 20 million gallons a day from that one source, and that was my opinion at the time I made this report."

* * * * *

(10745) "When I thought the basin would yield 20 million gallons a day, I meant that amount for a continuous supply, and I considered it was a safe investment for the city to make in acquiring those lands. When I concluded that they would not yield more than 10 million gallons a day, I reached the conclusion that the acquisition as a whole was undesirable. If we could not get that right, we would not take the lands. Of course, I believe the company went ahead in good faith, but without the proper intelligence and information to make those very heavy investments."

Referring to his report of November, 1913, O'Shaughnessy says:

(10746) "Of course, the finding of water is a simpler proposition at Pleasanton than the creation of water at Calaveras. I think it all right to avail of the supply at Pleasanton, but I do not think it was good policy to buy so much land there. You have the right to condemn a water right; in other words, the company was confronted by one of two alternatives: to buy the land, or to get the water right by condemnation."

* * * * *

(10747) "With the information available, it was my business judgment on the 19th of November, 1913, that those properties ought to be acquired as part of the water supply. I did not think that I had sufficient information in November, 1913, to (10748) warrant me in advising the city to buy that land, and that is why I prosecuted this investigation. The board of supervisors demanded a report of me, and I handed it down with the very best ability I possessed, and the use of all information available, and I intended it to be as near final as I could make it. I would not call my finding a mistake."

* * * * *

(10749-10750) "If they [referring to Pleasanton lands] had yielded 20 million gallons a day, I would recommend taking them. It wasn't a question of price. I would say that in segregating the lands of the company I took the properties that were producing water, whether they were Lake Merced lands at \$2,000 an acre, or Pleasanton lands at \$200 an acre, and as I was concerned with taking the properties that were yielding water, which was then being supplied to San Francisco and its inhabitants, it was for that reason that I included these Pleasanton lands. * * * When I made my report of April 19, 1913, I was fairly familiar with those lands, and the uses made of them."

In this connection I cannot refrain from quoting—although it is really more pertinent to the discussion of water rights value—the following from O'Shaughnessy's cross-examination:

(10800) "Q. Well, would you pay a million dollars for an

additional 10,000,000 gallons of water, that is to say, assuming that the output of this is only 10,000,000 gallons, if it had in fact been 20,000,000 gallons, would you have been willing to pay a million dollars more?

(10801) "A. I don't want to criticise the form of your question, Mr. McCutchen, but I am afraid it is a little involved.

"MR. McCUTCHEN: Q. You were quite free to do so, Mr. O'Shaughnessy. Suppose you criticised the form of the question and then answer it. I am quite willing you should do that.

"A. I would like to have it read again. (Question reread by the Reporter.) A million dollars more than what?

"Q. Than you would otherwise pay for 10,000,000 gallons?

"A. In other words, would you pay a million dollars to get 10,000,000 gallons of water?

"Q. That is the English of it?

"A. I would.

"Q. That is to say, you would be willing to pay \$100,000 per million gallons for the water alone?

"A. I would for the additional 10,000,000 gallons."

In other words, O'Shaughnessy, in possession of all the information which the company had, not only approved the purchase of those lands from 1911 to 1914, but went so far as to insist that they be acquired by the city as a part of its municipal supply. He now changes his mind because, from reports made to him, he believes they do not yield as much water as he originally thought they did. Is the company, in opening up a new field in an endeavor to get water for San Francisco, to be penalized to the extent of its entire investment because the supply developed was less than was at first anticipated, assuming that this is so? If the lands are useful when they yield 20 million gallons daily, why are they not in use even though later they should be found to yield but 10 or 15 million gallons? The use is the same. The yield may be different, and for water purposes their value may be different, but the use is identical. They have performed a definite

function. Is it, however, the fact that from 1911 to 1914 O'Shaughnessy believed that the yield at Pleasanton was more than 20 million gallons daily? Let us turn to his cross-examination:

(10802) "Q. Had you been investigating the subject before that?

"A. So far as I could give the time to it.

"Q. You made a report on that subject about the same time, didn't you?

(10803) "A. I did.

"Q. Referring to the transbay sources, did you not state in that report as follows:

"MR. SEARLS: Please identify the report, Mr. McCutchen.

"MR. McCUTCHEN: I thought it was earlier than this, but it is a report that bears date February 6, 1913.

(10803) "MR. SEARLS: Addressed to whom?

"MR. McCUTCHEN: 'Notes on Reports of Spring Valley Water Company, filed with the Advisory Board of Engineers, U. S. Army, December 23, 1912, showing that company has grossly exaggerated the possibilities of the sources of supply; M. M. O'Shaughnessy, City Engineer.' It is addressed to the Honorable, Secretary of the Interior, and the Advisory Board of Engineers, U. S. Army, San Francisco Water Supply Investigation. From that report I read as follows:

" 'It is therefore quite evident that the yield of the three drainage areas just mentioned is by the first rough computation about 38,000,000 gallons daily, and by the second computation, based on Mr. Duryea's figures, consistently less than 48,000,000 gallons daily, or say about 40,000,000 gallons daily, and the yield from the Alameda gravels as above noted, about 15,000,000 gallons daily, would give the yield of the Alameda Creek system of the Spring Valley Water Company as at the very outside, about 15,000,000 gallons daily.'

"Do you remember that, Mr. O'Shaughnessy?

"A. I recall that.

“THE MASTER: Is the first part relative to the Pleasanton gravels?

“MR. McCUTCHEN: “No, the second part. The 15,000,000 gallons is with reference to the Pleasanton gravels.

(10804) “MR. SEARLS: It says ‘Alameda gravels,’ doesn’t it?

“MR. McCUTCHEN: Well, if it is Alameda it must include Pleasanton and Sunol. There are some notes in that, Mr. O’Shaughnessy; I should not have handed you that copy; it is a copy on which we have made some notes. Do you happen to recall this language as part of the report?

“A. I would have to read the previous part.

“Q. Will you be good enough to do that?

“A. Yes, I will.

“Q. Have you any recollection now that you did at one time make a formal report to the effect that those gravels could not be relied upon to produce more than 15,000,000 gallons a day at both Pleasanton and Sunol?

“A. That is the only report that I recall.

“Q. You do recall this report, don’t you?

“A. Oh yes, I do.

“Q. And when you spoke of Alameda gravels here you meant the gravels at Sunol and at Pleasanton, didn’t you?

“A. I believe I meant them both combined.

“THE MASTER: What is the other figure of 40,000,000?

“MR. McCUTCHEN: Suppose I read a little more than that?

“THE MASTER: What does that refer to?

“MR. McCUTCHEN: That is for three sources, Calaveras, Arroyo Valle and San Antonio. The 15,000,000 gallons is the output of the gravels at Sunol and Pleasanton.

“Q. Is not that your view, Mr. O’Shaughnessy?

“A. Combined, yes.

“Q. Now, I understand that you made this recommendation in November, 1913, or nearly a year after this report was made, because you were under the impression that these gravels would

produce 20 million gallons a day at least, and you had been induced to believe that by the representations of the company?

"A. The ultimate quantity of water that could be developed from those gravels was not proven at this time, it was just as near as we could get it from the water that has been drawn. That is dated February 6, 1913.

"Q. The language of this report is, Mr. O'Shaughnessy, 'It is therefore quite evident that the yield' is only so much.

"A. Well, that was based on the actual developments that had been taken out from those two sources in the previous years, and that is a very good basis to go on."

No comment which we may make can refute as conclusively as these statements of the witness, himself, the suggestion advanced by him that he believed the yield at Pleasanton was in excess of 20 million gallons daily. The proceedings before the Secretary of the Interior in the latter part of 1912, and the early part of 1913, had to do with the potential capacity of the various systems under consideration. The actual withdrawals were known; they were matters of history; they needed no comment from O'Shaughnessy. He was addressing himself to the future possibilities of the Spring Valley system when he said:

"The yield from the Alameda gravels as above noted, about 15,000,000 gallons daily, would give the yield of the Alameda Creek system of the Spring Valley Water Company as at the very outside, about 15,000,000 gallons daily."

On analysis, we do not feel that there is a great difference between complainant's and defendants' witnesses with regard to these properties. Dillman considers that it was wise for the company to acquire them, his criticism being directed to their retention. We have shown that their sale might have resulted in an embarrassment to the final determination of the controversy which is just nearing a conclusion and might have ended in jeopardizing the attainment of the very object for which they were bought—

the final settlement of the company's rights in the Livermore Valley.

O'Shaughnessy claims that they should not now be included because they do not yield as much water as he at first thought they did, due to the fact, he states, that the estimates of original yield were exaggerated. The city is, however, actually getting water from Pleasanton by virtue of those purchases. Are they to be eliminated as elements of value simply because, up to the present time, they have not given to the company as much water as the City Engineer now says he thought they would? It is submitted that this question carries with it its own answer.

Reservoir and Watershed Lands in Alameda and Santa Clara Counties:

Of the property which complainant owns in Alameda and Santa Clara counties, aggregating 49,038 acres, the city concedes that 8,805 acres are in use, and contends that the remainder is not employed in the public service. Aside from the Pleasanton lands, this leaves 35,575 acres asserted by the defendant not to be in use. These lands are those lying in three reservoir sites—Calaveras, San Antonio and Arroyo Valle—and watershed lands draining into those reservoirs and into the gravels at Sunol. As to the three reservoir sites, we shall state our case briefly:

As reservoirs, they were not actually in use. The Calaveras was partially constructed during the rate period, but no water impounded there was delivered to San Francisco. Their actual use during the years in controversy was as a part of the entire drainage area. As far as actual use is concerned, therefore, they stand upon the same footing as other watershed land, and will be so treated here.

We should have supposed that it would be a fair assumption that any municipality would prefer to have every possible means of protection taken to insure a pure water supply. The elimination of dwellings and normal activities from drainage lands and their policing is, of course, a step in that direction. It is exactly

this protection which the ownership of the watershed lands in the two counties above referred to gives to the Alameda sources of supply. The great bulk of the acreage is comparatively inexpensive land, and for anyone to say that it would be as well, from a water supply point of view, to have such land inhabited, and used for any of the purposes which private ownership permits, amounts to a defiance of the accepted principles of protection. There are cases, of course, where a municipality may be unable to afford this protection, but that it is, in fact, protection is, we submit, indisputable.

Hazen says: [Quotations are from the Abstract, pp. 2440-1; 2477; 2479.]

(8400) "They are not very expensive lands. The company has prudently bought them and they are wisely carried. It seems to me that carrying them is a part of the business of supplying San Francisco with water, looking at it broadly, and that the worth of the property used in doing that has got to be recognized in some way."

Referring to the property between Sunol and Calaveras, he says:

(8492) "It protects the Sunol water by giving the company control over the lands; it makes it impossible for the owners to do the things that they otherwise might do that would tend to pollute the water. I don't know whether stock has been run over the Calaveras Valley and has access to the streams everywhere, but I will accept that as being so. That tends very slightly to pollute the water. The fact that the water passes through the filter beds at Sunol would purify it of any such contamination in great part."

On cross-examination, meeting the counsel for the city on a chosen case, he says:

(8500) "Taking Parcel 250, at the head of the Alameda Creek Valley, below the dam, I should not think it would be comparable to the case of city building lots; what might happen there would be a ranch and ranch houses, and perhaps picnic grounds, and

that sort of thing. The more land the company controls on the watershed area, the less likelihood there is of pollution. If they could own it all, of course that would be desirable; they do not own the whole of the Alameda shed, they only own a comparatively small part of it. The more they own, the safer they are."

Metcalf says: [Quotations are from the Abstract, p. 3143.]

(10,385) "Those areas have to do with the protection of the supply. It is advantageous for the company to be able to control and police the watersheds which are tributary to its supply. It becomes a question of how far it is reasonable to go in controlling the entire area. Obviously, it would not be desirable from the point of view of the public to attempt to control the entire watershed of all these streams at the present time, because that is not necessary, and the use is too remote. You can accomplish the same result by different methods. The amount involved in the lands which have been included in this reproduction cost estimate, which come within this discussion, is comparatively small. I think it is doubtful if you could justify the inclusion of the Arroyo Valle lands on the score of protection of the watershed alone, if it had not a reservoir value, but as regards San Antonio, I think that would be desirable, because of its greater proximity to the collecting center of the company."

* * *

(10590) "I do not think that the property in the vicinity of Alameda County, in which the company holds property, is likely to appreciate in value on account of residential consideration as much as on the Peninsula. I think the Peninsula is one of the most attractive regions for residential purposes I have (10591) ever seen. I think it is true that the development along residential lines is likely to be much less in the Alameda system than in the Peninsula system, and I think that had the company not acquired certain lands which it did acquire, you would have seen a great deal of summer camping on those streams as you do now below the Sunol Dam during certain months of the summer. The

region above Calaveras, for instance, is exceedingly attractive for that sort of thing, and it is accessible enough with a Ford automobile so that I think you would see many parties going up in there; the fishing is good, the views are beautiful, and the hills are very attractive. The same thing is true of portions of the Arroyo Valle. I do not personally think that it is safe to rely wholly upon policing to prevent pollution of the streams in that vicinity. Of course, that is advantageous, but to say that you can control a lot of campers in what they would do is contrary to my experience. I think you are safe, at all events, in keeping them off of the watersheds that are immediately tributary to your sources of supply."

These lands were used during the eight-year period as watershed lands, and their use for that purpose is a fact. Upon what theory can they now be excluded from consideration? Dillman does not openly propose their exclusion. He says: [Quotations are from the Abstract, pp. 3211-12; 3238.]

(10835) "The Arroyo Valle, San Antonio, Alameda and Calaveras lands are not considered as used or useful in this estimate, except in connection with an additional allowance of approximately \$1,500,000. Were these lands in other ownership, the water production would not be affected. Were they put to other use which might pollute the water beyond the ability of the Sunol filter bed to purify, such pollution could be stopped by injunction or by special police officers employed by the company, and acting under the State law prohibiting the pollution of domestic water supply. These lands are naturally grazing and grain lands, and their use as such would not be different from their present uses in the ownership of the Spring Valley Water Company. The water from all of these lands is filtered before it passes through the conduits, and then comes into storage in San Francisco in the distribution reservoirs. I understand that a value for all these water rights has been allowed."

(10837) "In making that allowance, I considered that it would not be unreasonable to allow for a strip of land protected by fencing along the strip through lands of the Spring Valley Water Company or other lands which might be appurtenant, and while all this water gets filtration, and probably needs filtration, at Sunol, or through the well production at Pleasanton, this is certainly ample to allow for reasonable protection, should it be considered necessary; that protection is not necessary now, but possibly would have been necessary now, or in the past, had the lands been in alien ownership."

* * *

(10926) "I have allowed no specific sum for land values along the creeks. It would undoubtedly have cost more per acre to acquire a strip through the land than acquire the whole acreage."

Dillman is convinced that protection along the stream banks is desirable, but does not include the remainder. He is unable to go the whole distance as O'Shaughnessy does. The latter says: [Quotation is from the Abstract, p. 3119.]

(10508) "I have made a careful examination of the Sunol drainage area, and believe that the 7,660.69 acres shown on the accompanying map includes all areas in that zone properly tributary to the diversion works at Sunol, and the gravel beds, or necessary (10509) to preserve the supply from contamination. If the Spring Valley Water Company had permitted these watershed lands above Sunol to pass into the hands of other ownerships prior to the years in controversy, it is my opinion that the supply would not be endangered."

Does O'Shaughnessy mean by this to imply that the present purity of the water would have been maintained without the ownership and use of the Alameda watershed lands? Judging from his answer to your Honor's question regarding Merced, it is possible that he does. If he did, however, we cannot help wondering why he proposes to have the city acquire the de Saissett

Ranch for instance. Why make the exception with the Nusbaumer place and not with the remainder of the property?

What we have had to say of the Merced and Pleasanton lands, so far as the previous attitude of the city is concerned, is even more true of the lands now discussed. They were acquired decades ago. They have been retained and carefully kept. They have been included by the company in every report which has been made to the city upon the subject of either valuation or rate-making. They have been included as land in use in every report of the City Engineer to the board of supervisors bearing upon this subject. They are specifically included and referred to in the report made by the witness O'Shaughnessy. No point was made in the earlier cases that these lands were not in use, and Judge Farrington found that they were in use and allowed for them. The city itself, in its condemnation complaint, and O'Shaughnessy, in determining what properties to include within it, included these properties. It is of these, as well as the Pleasanton lands, that the city has said in 1914:

“* * * all of said properties have been and now are used exclusively for the furnishing of a water supply to said City and County of San Francisco and its inhabitants.” (Compl. in Eminent Domain, subd. VII.)

In leaving this subject I think we may be pardoned, if we ask one question. Were Dillman or O'Shaughnessy advising complainant as to its duties to the public, with the facts as this record shows them to be, would they, for a moment, countenance the alienation by this company of this protective area? Taking it as it now is, without regard to future development, would they not agree with Metcalf and Hazen and instruct us not to abandon any of our lines of defense? Would they not follow Judge Farrington, and hold that this property has been, and is, in use?

Reserve Lands:

Your Honor may not agree with us as to the actual, present use of some of these lands. To meet that contingency we want to refer briefly to the subject of properties acquired in good faith and held in reserve for future use. It is our understanding that the rule is that such lands, requisite for a reasonably immediate use should be treated as property in use. As the New Jersey Court of Appeals has said, in

Long Branch Commission v. Tintern Manor Water Co.,
70 N. J. Eq. 71; 62 Atl. 474, 479 (1905),

“* * * it would be manifestly unjust to expect them to invest their money in a plant necessarily larger than present demands require and take as an income therefor such a sum as would satisfy an investment sufficient to meet present demands.”

This rule must be clearly distinguished from the one discussed in *San Diego v. Jasper*, 189 U. S. 439; 47 L. Ed. 892 (1903), where it is held that a plant overbuilt or built without regard to demand shall not be given full value in rate litigation. The one case involves an anticipation in a reasonable manner of the future demands of a growing community; the other relieves the public from bearing the burden of a utility's mistake, and in effect states that a plant shall not be given a value for rate-fixing purposes which it has not on the market. The rule to which we refer is necessarily one of reasonableness, and the test should be, as we submit it is, is the given acquisition such a one as a wise and unbiased foresight, looking at the water supply business alone, would have prompted? As Judge Farrington has said in

Spring Valley Water Co. v. San Francisco, 192 Fed. 137,
159 (1911):

“While the company should be in advance of the present demand, and provide for emergencies, for growing population, for unusual droughts, and for extraordinary conflagra-

tions, it should not be too far in advance. If property is to be included in a valuation for rate-fixing purposes, it must be shown to be either presently useful, or to be necessary for wants which are near at hand."

In other words, during these rate-fixing periods, would the city have deemed the acquisition of these properties proper and necessary? We have the city's answer in its condemnation complaint. Were the lands sought to be eliminated not actually in use—which they are—they plainly come within the reserve property class. Calaveras Dam, the only large structure involving a heavy expenditure, was actually under construction during the period in question. San Antonio, as a reservoir, in Metcalf's opinion, will be availed of within ten years. Arroyo Valle, as a reservoir, is farther in the future. Judging from the expressions of opinion in the cases and the decisions of the commissions, the company would be remiss had it not made some provision similar to that which it has actually made. We refer your Honor to some of these decisions:

Whitten says on this subject (sec. 216):

"Every plant when constructed is designed to meet the requirements of a number of years' growth. * * * Unless growth is adequately provided for, the loss from inadequacy will be enormous. * * * In any live plant there must always be room for growth—always capacity to take on more business. The investment necessary to secure this surplus capacity is a reasonable part of the present cost of service."

The reason for the rule to which we have referred was stated by Judge Hough in

Consolidated Gas. Co. v. City of New York, 157 Fed. 849, 857 (1907),

from which we quote:

"There remain, however, properties included in the report, fairly to be described as large tracts of land, the inclusion of which is justified upon the ground that complainant is entitled not only to a return upon that which it presently

uses, but also upon something more which it may require for similar use in the near future. How near that future may be is not shown, nor even intimated as to most of the disputed items, and it may fairly be said that, in a suit such as this, proof of necessity near at hand should be required."

The State Commissions have also had this question before them: In

Ely v. Ely Light & P. Co. (1913), 3d Ann. Rep. Nev.

P. S. C. 295, 315, 24 A. T. & T. Co. Com. L. 578

(quoted in note in P. U. R. 1915A, p. 49),

it was said:

"We do not think that it is sound doctrine for us to hold that a public service corporation shall be tied down to the construction of a plant no larger than is actually needed for the service immediately to be performed. Every company engaged in such business has the right to look into the future and provide for increased business which seems reasonably in prospective. It is a well-known fact that it is much more economical to construct a plant of sufficient dimensions as an entirety than to add to it from time to time as the business increases; besides which, the plant which is constructed at once, and as an entirety, is usually more harmonious in its structure, more efficient and more economically operated."

From

Re Lincoln Teleph. & Teleg. Co. (1913), 6th Ann. Rep.

Neb. State R. C. 191, 199, 19 A. T. & T. Co. Com. L.

134 (quoted in note in P. U. R. 1915A, p. 50),

we quote the following:

"Investigation of the affairs of many of the telephone companies in cities above 20,000 population demonstrates clearly that every prudently projected plant has more or less idle plant intended for future development, and it is necessary, in order to be able to efficiently serve the public and meet promptly increases in the demands, that this should be so. There are, of course, limits within with such advance

construction will be reasonable, and when it is reasonable, there can be no question but that the corporation is entitled to consider it as part of the plant upon which it shall be entitled to make earnings."

In

Municipal League of Phoenix v. Pacific Gas & Elec. Co.,
(1913), 1st Ann. Rep. Ariz. Corp. C. 353, 369, 21 A. T.
& T. Co. Com. L. 699 (quoted in note in P. U. R.
1915A, p. 50),

it was said:

"It is found that the company has anticipated the growth of its gas business by the installation of equipment of greater capacity than is at present required, but in our opinion, and considering the facts presented, it should not be penalized for so doing by reducing the value of its existing plant to the value of a plant adequate for its present needs."

The subject was considered in

Re Montreal (1913), 13 A. T. & T. Co. Com. L. 93
(Canada Board of Railway Commissioners; quoted in
note in P. U. R. 1915A, pp. 50-51),

wherein it was said:

"There is no question that preparation for future needs is one of the incidents of the proper management of a public utility corporation. If it is to allow demands for service to pile up, and then make an expansion only after the urgency is sufficiently great, the public will be subjected to the disadvantage of delay in obtaining service, and at the same time the piecemeal method of construction this will necessitate will undoubtedly add to the cost of the plant. A comprehensive system of preparation for future needs must be followed if there is to be proper expansion. * * * * Again, even admitting that for some considerable period of time there is plant not actively in use, it does not necessarily follow that it is fair to deduct this from the plant value."

To the same effect was the decision in

Public Serv. Com. ex. rel. Seattle v. Seattle L. Co. (Wash. Pub. S. Com.); P. U. R. 1915B, 135, 138:

“The defendant company at the request of the Commission has made extensions in the city of Seattle, which were complained of by the said city as being in advance of the necessity of the population, and has requested the Commission not to consider the expenditures of money covering such extensions in the valuation of the property of said defendant company. The Commission is of the opinion, and finds, that the company is entitled to have said property valued as a basis of its fair value for rate purposes.”

In

Buffalo Gas Co. v. Buffalo (1913), 3 P. S. C. (2nd N. Y.) 553, 23 A. T. & T. Co. Com. L. 244 (quoted in Whitten, p. 1010),

it was said:

“All of the land of the Genesee Street plant should be treated as in the public service. The contention of the city that a certain parcel next to the canal is not in the public service should not be allowed. It is not in fact used at this moment, but it is directly adjacent to the generating plant of the company, and with any growth in the business would undoubtedly be needed; and justice and fair dealing do not allow for a moment the quantity of land to be scaled down to the lowest point possible under present circumstances. The company is fairly entitled to a reserve of land of this character at this location. * * *

“At Forest Avenue there are two parcels of land separated by the tracks of the New York Central Railroad. The smaller tract is rented for and used as a coal yard and has no connection whatever with the public service. A considerable portion of the larger tract next to the water is not in fact used in the public service at the present time. The holder and engine-house are situated at one end of the lot, and some small cheap buildings at the other end which are not used for gas purposes. Owing to connection with the street, loca-

tion of piping, etc., it is believed that it may not be unreasonable to treat the whole tract as being in the public service."

We have little to add. That any agency supplying an indispensable necessity should take such steps as it can to anticipate future demands is fundamental. That it shall not receive recognition for the performance of such a duty is unthinkable; the duty must be ascertained, the compliance must be reasonable. That, as we see it, is the general rule. The specific case must be judged on its own showing.

It will not do to say that when reserve property comes into use it will be considered and allowed for. The Minnesota Rate Case is claimed to lay down the rule that the rating base shall refer to present value, and that the costs of the past are not a consideration. That is the argument of counsel in this case. Is it conceivable that the utility will be forced to acquire property to protect the future, carry it without compensation during a period of years, and obtain, when it goes into use, a return on its then value? We think not, and, to employ the language of one of the Supreme Court decisions, we think neither justice nor the Constitution so require.

REAL ESTATE

MR. McCUTCHEN: If your Honor please, the discussion of reservoir value will be taken up by Mr. Olney. I shall endeavor to cover real estate and water rights. All other elements of the plaintiff's case will be covered by Mr. Greene's discussion.

The testimony with reference to real estate and water rights was given by men whose training and equipment were supposed to peculiarly qualify them to give sound and dependable advice, and all or nearly all of the testimony given regarding the value of each of these elements may accurately be called opinion evidence. In the very nature of things resort must be had to evidence of that character in determining the value of real estate, reservoir lands and water rights. Men who give testimony of this nature are generally called experts. The title does not always express the fact, but it has come to be very generally applied to men who give opinion evidence.

We have all had more or less to do with expert witnesses. Generally speaking, in order that the testimony of an expert on value may produce anything like conviction in our minds, we must be convinced that his experience and opportunities have been of such a nature as to enable him to express an opinion as to the value of the property which is being considered, and after he has convinced us that he is in every way qualified to express an opinion we must, before being willing to receive and be bound by his opinion, be satisfied that we are getting his candid and honest judgment. He must impress us with his intellectual honesty. It is a very easy thing for one to express an opinion as to the value of property, but the opinion cannot have much value unless the person expressing it has had such experience as to enable him to know what the value is, and is inspired by that spirit of fairness which prompts him to give to the tribunal before which he is appearing the best there is in him. After qualification has been demonstrated, the performance must be an honest, candid performance. If the so-called expert

is not competent to advise, of course his advice will not be taken, no matter how candid he may be. If he is competent to advise and his advice is not honest and sincere, it certainly will not produce conviction.

The maxim "false in one, false in all" should, it seems to me, be applied with much more strictness to one who is testifying to his opinions than to one who testifies to what he sees or hears, or claims to have seen or heard. There may be no substantial foundation for this distinction, but I feel that it should and does exist. If we are led to distrust the genuineness of one opinion, we are forced to have the same distrust with reference to other opinions of the same witness.

The avenues that are ordinarily open for the purpose of testing the truthfulness of a witness who testifies to a fact are almost invariably denied us when we are dealing with one who simply testifies to his thoughts or opinions. In the first case, the fact claimed or sought to be established may be and ordinarily is within the knowledge of others, but if one says his opinion is so and so, we must accept it as his genuine opinion unless it is inherently improbable, or unless the manner of the witness induces us to doubt.

We cannot by any positive testimony show that an expressed opinion is not really the opinion of the witness. We cannot by another witness, that is to say, in the ordinary case, show that what one says is his opinion is really not his opinion, and it is therefore necessary that the expert should so conduct himself as to put down any suspicion that he is disingenuous; for when we are forced to doubt whether one opinion given by an expert is his genuine opinion, when it has been shown with reference to one subject matter that he has not dealt candidly, fairly and honestly with the tribunal he is attempting to advise, then we are irresistibly led to doubt, distrust and hence disregard all of his opinions upon all subjects. We instinctively feel that an

expert who will color his opinion on one subject will be equally without conscience when dealing with other questions.

The time of an expert is paid for, and it is proper that it should be. He is paid, however, or should be, to give his honest opinion, but we know that many experts, altogether too many, think they are employed to fill the gaps, to become advocates for the side that employs them, in the language of the street, to "deliver the goods." While it is not always easy to say whether a witness is sincere, whether he is intellectually honest, nevertheless what he says and the manner in which he says it, coupled, as I have heretofore suggested, with his qualifications, enable the judge before whom he appears to correctly estimate him.

I invite a comparison of the experts on real estate, reservoirs and water rights along the lines which I have suggested. I intend to call your Honor's attention to testimony which I think shows lack of ability on the part of the defendants' witnesses to express opinions, and such lack of candor, assuming they had ability, as makes it unsafe to adopt or follow their advice. I invite counsel on the other side to adopt the same course with reference to the witnesses called by the plaintiff. I invite him to point to testimony that indicates anything like lack of ability on the part of any of those witnesses to express an intelligent opinion on the subject on which he testified, and I particularly invite him to point to testimony which shows or indicates lack of intellectual honesty on the part of such witness.

Lake Merced.

So far as Lake Merced values are concerned I shall not discuss the testimony touching them. Generally speaking, four witnesses covered that branch of the case, Baldwin and McDuffie for the plaintiff and Paschel and Martin for the defendants. I would be lacking in candor if I did not say that Paschel and Martin impressed those on our side with a desire to be fair. I nevertheless feel that Baldwin and McDuffie, by reason of their much

wider experience in buying lands for subdivision, including tracts in the neighborhood of the Merced lands, were better qualified to tell what could be done with these lands than defendants' witnesses. Paschel and Martin have really had no experience in the purchase or sale of acreage property nor in the subdivision of acreage property. Baldwin and McDuffie, on the other hand, have had very extensive experience along that line, both in San Francisco and elsewhere.

The figures of the respective witnesses on these lands were as follows:

Paschel, \$5,089,583.00.

Martin, \$5,005,537.50.

Baldwin, \$6,718,250.00, exclusive of lakes; \$7,390,075 with lakes.

McDuffie, \$6,454,759.50, exclusive of lakes; \$7,100,235 with lakes.

MR. SEARLS: I call your attention, Mr. McCutchen, to the fact that Mr. Martin said that 20% should be deducted for the wholesale feature of the sale.

MR. McCUTCHEN: Yes.

The testimony given by these witnesses was in the nature of opinion evidence, and the court will naturally be inclined to accept the opinion of the witness who shows himself to be well qualified from training and experience as against one given by a witness with less training and less experience, assuming all the time that the two are equally candid. Judged by this standard, the testimony of Baldwin and McDuffie with reference to the value of these Merced lands should be more convincing than that given by Paschel and Martin.

Without intending to disparage the testimony given by others, I am constrained to call especial attention to the testimony of McDuffie. He conducted himself like one who was master of his subject. As I have said, his experience has been a liberal one. His equipment is excellent and it is apparent, even to one not of his calling that he devoted a great deal of thought to his subject. McDuffie had not only bought property in the neighbor-

hood, but he had subdivided and sold property there and showed an intimate knowledge of all sales which could possibly throw any light upon the value of these lands. It is for your Honor to say which of these sets of witnesses affords you the better guide. On the one hand you have two honest men of intelligence but without experience in buying, selling or handling property like the one to be valued; on the other, you have two men equally honest and equally intelligent, who have been trained in this particular field, whose experience, as I have said, has been extensive, and who should be able to give sound advice upon the branch of the case on which they were called. Under the circumstances, I would think that the elements of training and experience were entitled to great weight, and beyond this rather obvious suggestion I do not feel that anything that I might say with reference to the testimony given by the four witnesses would be of substantial aid to you in determining the value of the Lake Merced lands.

Peninsula Real Estate.

Leaving out of consideration for the moment the value which the lands have for reservoir purposes, the witnesses for the plaintiff on real estate values on the Peninsula were Baldwin, Hoag and Rodgers, and practically the one witness for the defendants on that branch of the case was Norwood B. Smith. It is true that Mr. Oliver was called, but his knowledge of Peninsula values was certainly limited, and at any rate I do not intend to devote any time to a discussion of the testimony which he gave.

Let us look, then, for a moment at plaintiff's witnesses—Baldwin, Hoag and Rodgers.

Mr. Baldwin, who has been active in the real estate market in many districts of the state for many years, was among the first of the real estate brokers to engage in the sale of property in San Mateo County, and particularly in and about San Mateo

and Burlingame. It may fairly be said that he had a great deal of experience in that field. He has developed his experience to you and has given you the names of purchasers and sellers in many transactions in that locality which were conducted by him and his office.

Hoag had for years before becoming a witness in this case operated extensively on the Peninsula, beginning about Easton, on the north, and extending to Redwood City or Palo Alto, on the south.

Rodgers has for many years been the manager of the properties in San Mateo County known as the Mills and Easton properties, and has made many sales of property which practically adjoins the Spring Valley Peninsula properties, these sales aggregating many hundreds of acres.

Assuming these men to be intelligent, and I take it there can be no question about that, it follows that the experience which they are shown to have had qualifies them to express an opinion upon the value of the Peninsula properties of the water company, leaving out of consideration for the moment any value that may attach to those properties because of their availability for water production or water storage. And, by the way, while I am upon this subject of qualification, I want to remind your Honor that the defendants for some reason, and what it was your Honor can speculate as well as I, did not see fit to cross-examine Mr. Hoag, so that his testimony in chief comprises practically all the testimony given by him. I know that it often happens that a witness has made such a distinctly bad impression that it is not thought worth while to cross-examine him, but I can confidently say that that was not the reason Mr. Hoag was not cross-examined. At any rate, I invite counsel upon the other side, when he comes to a discussion of the Peninsula real estate, to point out to your Honor any lack of qualification in Baldwin, Hoag or Rodgers to express an intelligent opinion regarding Peninsula values.

I do not intend to discuss the testimony given by these witnesses. If there is any weakness in their qualification to speak, or in what they said, or in their manner of saying it, counsel on the other side is keen enough to point it out to you, and I desire to say to counsel that if he does not show by concrete examples that their opinions should not be taken, we shall take it as a confession from him that such examples are not to be found.

On the other hand, we have Norwood B. Smith. I shall not attempt to discuss the whole of Smith's testimony. It would take altogether more time than could be profitably employed. I have no hesitation in saying that in my opinion he showed himself to be incompetent and lacking in candor. But, after all, the opinion of counsel is not of much importance, and probably I would as well not have expressed one. Unless incompetency and lack of candor on the part of the witness shall appear, independently of what counsel may think, I appreciate that time devoted to a discussion of these matters would be very unprofitably employed, so that my criticism of Smith will consist in the main of quotations from what he himself has said. What he himself has said gives a better photograph, a more accurate estimate of him, than anything I might construct. I could not do justice to the witness if I attempted to clothe him in anything but his own words.

I want to remind you that it took a long time to get from Mr. Smith the admission that he never had made a sale, a single sale, between San Bruno, on the north, and San Carlos, on the south; that when he made these valuations he did not know the sale price of a single piece of land within that area; that he did not know the asking price of more than half a dozen pieces, and they were in the neighborhood of Belmont, and indeed it is doubtful whether he had that information before making the Spring Valley valuations. He did get a price on the McFarland property and said he wanted to know the asking price of that

property because it would aid him in valuing the Claffey and Callaghan properties, but I will come to that later on.

I would not be doing complete justice to this witness if I did not refer to his statement that he was the only living man qualified to express a really dependable opinion as to the value of these Peninsula properties. That statement, when it was made, reminded me of the testimony given by an expert in another litigation. He had testified to something that cross-examining counsel considered rather startling and he was asked on cross-examination if anyone else had the same knowledge on the subject that he had. He replied no, that he knew more about that than anybody. When he left the stand, it was suggested to him it was a remarkable statement for a witness to make, that he possessed all the knowledge on any one subject and was the only one who knew anything about that subject, and he was charged with being rather egotistical. He said, not at all, that he was under oath, that the question was put to him, and he was obligated to make a truthful answer. And so I suppose Mr. Smith made this answer only because he felt obligated, in the language of the oath, to tell nothing but the truth.

Before I take up the subject of Smith's qualifications, I want to call attention to what he had to say about the Husing sale. I think it is more than a severe reflection upon his integrity; it demonstrates his lack of candor. I have no doubt your Honor remembers very accurately his testimony with reference to the Husing transaction, but it is not long and I will read it. And in this connection I want it borne in mind that when the witness was asked by the counsel for the city to tell of sales which he thought threw some light upon the value of the properties which he was valuing in this case he instanced or cited a number of sales, including the Santos sale, the Marchand sale and he also cited the quotation which he had upon the McFarland property. Now, with that in mind I desire to read to your Honor this testimony:

(3434) "Q. You know the Husing property has been sold, do you not?

"A. Yes, I know it has been sold.

"Q. How long have you known it?

"A. It was sold, or at least I recall learning of the sale one day when I was in Redwood City, in Judge Fitzpatrick's office; it must have been just either the end of last November or the first of December.

"Q. Before you put your valuations on this property?

"A. A great while after.

"Q. A great while after? A. Yes, quite a while.

"Q. That is to say, did you put your valuations on before last November.

"A. I told you I made the valuations of this property in March and April, 1914.

"Q. And had you reported your values to the city attorney's office at that time?

"A. I don't remember the exact date, but it was certainly before November."

And then again, page 3435:

"MR. McCUTCHEN: Q. Didn't you go to Husing and seek information on the subject?

"A. Yes, I went to Husing and talked to him.

"Q. And you got the information, didn't you?

"A. I got some information from him.

"Q. What was it?

"A. Husing told me—perhaps I had better recite just what happened. I said to Mr. Husing, 'What did you pay for that property when you bought it from the O'Connor girls?' He hesitated a moment. I said, '\$24,000, wasn't it?' This was on August 29, 1915. He said, 'No, I got more than that, I paid more than that'; he said 'I paid, I think, \$30,000 for that property in 1909.' I said 'You got \$125 when you sold it.' He said, 'Well, I have been dickering with the company ever since I bought it,

and they had to have it, and I put a price of \$150 an acre on it, but they never would see it, and they held out against it, and I let them have it for \$125, but of course I don't know that they bought it.'

"Q. Where was that conversation, and at what time?

"A. I have already given the date. It was on a Sunday, in his office in San Mateo.

"Q. Didn't he tell you at that time positively that he had not sold it to the Spring Valley Water Company?

"A. He said——

"Q. Answer my question 'Yes' or 'No'; didn't he tell you positively that he had not sold it to the Spring Valley Water Company?

"A. He said that he did not deed it to the Spring Valley Water Company.

"Q. Didn't he say that he had not sold it to the Spring Valley Water Company?

(3436) "A. I could not say yes or no.

"Q. Didn't he tell you positively that the Spring Valley Water Company was not the buyer?

"A. He said that Mr. Pringle was the man to whom he deeded the property.

"Q. Didn't he tell you positively and unequivocally that the Spring Valley Water Company was not the buyer?

"A. He might have used words that could be construed to mean that, but he did not certainly intend to convey a positive impression of that, or I would have had it.

"Q. What words did he use?

"A. I don't care to quote him exactly; it is from memory, and memory is too dangerous to quote a conversation from.

"Q. Will you state that he did not tell you in substance positively and unequivocally that the Spring Valley Water Company was not the buyer of that property?

"A. I will state this, that——

"Q. Answer the question 'Yes' or 'No' and then make your explanation.

"A. No, I won't state that, but I would like to explain this, that we discussed the purchase of the Burke property, Parcel 164, which he had——

"Q. I am not asking you about that, I submit your Honor, that that is not responsive to my question.

"THE MASTER: Don't talk about the Burke piece; just talk about this one.

"A. (continuing) It brought the Spring Valley in, your Honor, that was my only purpose in referring to it. He stated that he did not know anybody in the transaction but Mr. Pringle."

There is not any doubt that this witness started with the proposition that the Spring Valley Company had been influential in fixing that price of \$125 upon this property, although it is worthy of note that nowhere does he intimate or suggest that that sale price of \$125 was any more than the Husing property was worth.

"MR. McCUTCHEN: Q. Why, then, did you say a moment ago that he had sold it to the Spring Valley Water Company?

"MR STEINHART: He didn't say any such thing.

"A. Did I say that?

(3437) "MR. McCUTCHEN: Q. Did you not intend to give the impression that he sold it to the company?

"A. I don't know what impression I wanted to give, except just as my words gave it.

"Q. Didn't you say he said that the company was stronger than he was, and he had to submit?

"A. He surely said that.

"Q. That he had to submit to the company?

"A. He didn't say that, no.

"Q. Didn't he tell you positively and unequivocally that he

would not have sold it to the Spring Valley Water Company for that purpose?

"A. I don't remember him saying that.

"Q. Do you remember the conversation?

"A. I remember it as I have outlined it.

"Q. Do you say now that he did not tell you that he would have sold it to the Spring Valley Water Company for that price?

"A. I don't remember his saying that at all.

"Q. But he may have said it? A. It is possible.

"Q. You knew of that sale before you testified here, did you not. A. Yes.

"Q. You testified to other sales that had a bearing upon the value of property in the locality? A. Yes.

"Q. Why didn't you refer to that one?

"A. I don't think that has a very good bearing on the value of the properties.

"Q. There are pieces on both sides of it that you valued?

"A. Yes.

"Q. One for \$42 and the other for—each piece for \$42 an acre. You were careful to testify to an offer on the McFarland property, were you not, as bearing upon these values?

"MR. STEINHART: That is objected to upon the ground that it is immaterial, irrelevant and incompetent as to what Mr. Smith was careful to do.

(3438) "MR. McCUTCHEN: I will strike that out.

"Q. You did testify to the McFarland property as reflecting values on these properties adjoining the ridge road, didn't you?

"A. Yes, sir.

"Q. And you didn't say anything about the Husing sale.

"A. I don't recall saying anything about the Husing sale.

"Q. And you failed to say anything about the Husing sale because you say it failed to reflect the value of adjoining properties?

"A. That is not the answer.

“Q. What is the answer?

“A. I said that it did not have a very material bearing on the market value of what land of the same type as the parcels on either side of it might be worth.”

Now, you will remember that he referred to the Waddell Creek lands and he referred to the Santos property and he referred to the Marchand property, and when he was driven to the necessity of saying it, he said he did not claim that those properties had a very material bearing on the value of the Spring Valley properties which he was appraising in this case. And his only reason for failing to disclose his knowledge of this Husing transaction was that it did not have a very material bearing on the market value of what land of the same type as the parcels on either side might be worth.

“Q. Is that land like the parcels on either side of it?

“A. It is very much superior to the parcels on either side.”

To say that he was honest in these statements which would tax credulity altogether beyond the breaking point is to say that he was incapable of reasoning from cause to effect. He says the Husing sale did not have a very material bearing on the value of the parcels on either side of it and that is the reason he did not call attention to it, but he thought the Santos sale and the Marchand sale and the McFarland offer were of sufficient importance to cite them to your Honor. When he says the Husing sale did not have a very material bearing on the market value of land on either side of it, we know the statement cannot be accepted. But that is not the point I am making. It is that this witness with an unfair motive concealed this sale and used the Santos sale and the McFarland offer as reflecting the value of the two parcels adjoining the Husing tract.

And as an aside, I want to recall a little episode that occurred on the inspection trip which we made,—and of course I am only giving now my own recollection, it may not accord with your Honor's recollection or with the recollection of counsel on the

other side, but I feel a good deal of confidence in the accuracy of my recollection of the episode. You may recall that in the course of that trip we stopped in front of the Law property below Woodside. This witness had previously said that he had sold to Law, for some people named Rengstorff, 60 acres of land that were popularly referred to in this case as the Rengstorff purchase; and when we stopped in front of the Law property he pointed out the Rengstorff property to us; we were quite a distance away from it, we could not see very much of it because the view of it was cut off by the hill in the Law holding. It is my recollection that he said at that time without qualification, "That property is very similar to the Husing property."

This appears in the record, that is to say, he was examined upon it and his answer, when his attention was called to it on cross-examination, was that "You (cross-examining counsel) might have understood me to say that but I did not intend to say so." You will remember that we could not get a very good view of the Rengstorff property and we walked up quite a distance, I should say that we made an elevation of approximately 600 or 700 feet, and when we got to that elevation and could see the Rengstorff property and could see that it consisted of a precipitous canyon I asked him, in the presence of your Honor, where the Rengstorff property was which was similar to the Husing property and he said, "Oh, I meant that part of this property was similar to the back part of the Husing property but the portion that is similar to the Husing property you cannot see from where we are." As I say, the statement was made at the start that the Rengstorff property was similar to the Husing property. Now, I submit that those statements are not consonant with the facts. This man was trained in the real estate field. He came here for the purpose of telling your Honor, because of his supposed ability to do so, what the value of these Peninsula properties was. But for him to say, in the first instance, that the Rengstorff property was similar to the Husing property, and in the next

instance that he had not disclosed his knowledge of the Husing price because it reflected no influence upon the value of the property on either side of it, I say is taxing credulity too far and that if you assume him to be intelligent you are driven irresistibly to the conclusion that he lacks candor.

I am reminded that when he was asked to tell us what he knew of values between San Bruno and San Carlos he had something to say about the Mezes property at San Carlos. In itself it is of comparatively little importance but as a straw it is useful in making an estimate of Smith's worth. He was asked to acquaint us with the information which he had regarding prices at which properties lying easterly of the Spring Valley properties were held; there was such a dearth of information upon that subject that he found it important to refer to this Mezes property, and I quote from the transcript, page 3510—and, mind you, this was after he had been asked time and time and time again to tell the price at which some property easterly of the Spring Valley property was held.

“A. There is land which comes to my mind, that used to belong to the Mezes estate back of Belmont; that was in the hands of one of the Pringles; he wanted us to try and sell it, and he asked us to make a particular examination of the land in an effort to sell it. This was long before anything was said about the Spring Valley condemnation suit, which was the original employment in which we were engaged, and we went over that land (3511) and the price was given to us and we actually worked quite a little time trying to sell it at the price which was given us. That was one particular instance.

“Q. Is that in the windy district?

“A. Yes, that is a windy district.

“Q. Now, what was the price that Mr. Pringle gave you on that land?

“A. On the 1st day of March, 1909, I have a note here, Mr. Pringle asked \$125,000 for the 486 acres, or about \$250 per acre.”

That is the only information that he gave us with reference to the price which Pringle asked and I think it is enlightening.

"Q. What date? A. March 1, 1909.

"Q. Are you quite sure of that? A. That is the note.

"Q. In whose handwriting? A. Mine.

"Q. When did you go into the real estate business?

"A. In 1911.

"Q. How did you happen to be talking to Mr. Pringle about this in 1909. A. I did not. It was in the office.

"Q. Did you have an office in 1909?

"A. No, I was not in the office, but the University Realty Company existed in 1909.

"Q. Then you are taking this from some record made by somebody else and testifying to what Mr. Pringle said, are you?

"A. I presume I am taking it from a letter or something like that.

"Q. Do you mean to say that you had that information before you put the values on this property?

"A. Yes, I had that information and I had further information, but I have not got it here.

"Q. That is to say before you were employed in this case you saw a letter stating that in 1909 Mr. Pringle asked something over (3512) \$200 an acre for the Mezes tract?

"A. Before I was employed in this case the information that I have read from this note was in the office, and while I was an officer, at all events, while I was connected with the University Realty Company, the matter was again taken up and the same price was given us, and it was at that time that we went over the land.

"Q. With whom did you take it up? A. Mr. Pringle.

"Q. Which Pringle? A. I don't remember.

"Q. You cannot tell us? There are four Pringles; can't you tell us which one? A. No, I cannot.

"Q. Did you take it up with him personally?

"A. Not personally.

"Q. How do you know it was taken up?

"A. I think I talked with him also.

"Q. Are you sure you did?

"A. I think I talked with him on the train; I can't recall.

"Q. Now, you mean to say it is that sort of information that gave you information as to the value or price of real estate in that locality?

"A. That is absolutely authentic information, the information that I used, that I have just recited, was absolutely authentic information; if I myself did not talk with him it would not make any difference, because my partner had talked with him personally or had letters from him."

The witness, who, as I have said, told us that he was better qualified to value this property than any other man living, had never heard of the sale from Easton to Elkins, the sale from Tevis to Mrs. Whitman, the sale from Hobart to Clark, the sale from Carolan to Irwin, or from Easton to Robert Hayes Smith. He thinks he may have heard of the Kohl sale, but whether before or after his valuation of these properties he does not know. He never heard of the sale from Molero to the Beresford Country Club, or from Moran to the Beresford Country Club, nor did he know the sale price of any lands to the east of the Spring Valley properties. He claimed to have heard of the sale from the Armitage Orphanage to Mr. Borel, but all he knew about that was what he saw in the newspapers. He knew nothing about the price.

The most remarkable thing about this is that when confronted with these sales, of which he was compelled to confess ignorance, he said that if he had known of them he would not have been influenced by them.

I quote:

(3498-C) "Q. Did the prices of any properties in that

locality influence you, that is, the price the property actually sold for?

"A. No, I don't think they did excepting in a general way; there was no specific instance.

"Q. When I say that locality I mean the whole of that country to the east of the Spring Valley property?

"A. There are no sales that I know of where I have the information in regard to acreage and price that have an exact bearing on this; they are simply a guide, and beyond that of little value.

"Q. Well now, to what extent are they simply a guide?

"A. To a very small extent.

"Q. To what extent? A. Almost negligible.

"Q. Almost negligible. Now, we may take that for granted, may we? A. As a general proposition, yes.

(3498-D) "Q. Are there any exceptions to it?

"A. Well, I think that the sale of the Schaeberg piece over on the west is a very good check on what values are in there.

"THE MASTER: You are talking about properties east of the Buri Buri ridge, aren't you?

"MR. McCUTCHEN: Yes.

"A. You mean only sales east of the Buri Buri ridge?

"Q. Yes.

"A. The only sale at all of any value is the Carolan sale, and that has a value only in consideration of the upper plateau."

The reference to that Schaeberg sale reminds me of another episode. When we were on the trip and had gotten back of Pilarcitos, the witness pointed out the property which Grainger had bought from Scarpa, and he described with considerable detail the characteristics of that property. He used that sale for the purpose of justifying the valuation which he had put on the Spring Valley properties in the locality. On cross-examination we asked him whether or not he knew the means of ingress and egress to the Grainger property, and he said he did, because he

had gone out over the road. It developed that Grainger was compelled to maintain a private road four miles in length over a very rough country in order to get to and from his property; that when he wanted to go from the property he was compelled to go to the west, to Half Moon Bay, and if he were going to San Mateo or to San Francisco, he was compelled to double back and probably would have traveled a distance of eight or nine miles before reaching on the Half Moon Bay road a point opposite his property. I said to Mr. Smith, "Does that fact reflect its influence on the sale value of the Grainger property?" He said, "Most undoubtedly it does." And then I said, "Well, when we were on the inspection trip, standing on that knoll overlooking the Grainger property, and you were arguing that the Grainger price supported your figures on the Spring Valley properties, why didn't you tell us of this difficulty of getting to and from the Grainger property, if you say that it reflected itself in the price at which Grainger had bought, or at which he was willing to sell?" "Well," he said, "apparently it had not occurred to me."

I submit to your Honor whether that ought not to have occurred to a real estate agent who was making an application of that sale for the purpose of determining the value of the surrounding property belonging to the Spring Valley Company. Now, that may be consistent with fair dealing, but it does not seem to me that it was.

Going back in the witness' testimony:

"A. The only sale at all of any value is the Carolan sale, and that has a value only in consideration of the upper plateau."

If that statement means anything, it means that not only was the importance of these sales negligible, but they had no importance whatever. I am speaking now of the sales other than that from the Howards to Carolan.

And now, to show how unsatisfactory and unconvincing the witness is, let me call attention to another portion of his testimony, and I quote now from page 3505:

“Q. So that if you did not use any of these sales before making your first valuation, if we may so call it, you did not use them at all? A. No.

“Q. Now if I may go back: if as you say the influence of all of these sales was negligible, might it be fairly said that you fixed the values upon all of these properties upon your experience in districts remote from this property?”

“A. It is unfair to state that. In the first place, I do not think, Mr. McCutchen, that I said all these sales were negligible; that could hardly be the case”——

If they were not negligible, that is to say, if they should have reflected their influence in an effort to ascertain the value of Spring Valley properties that influence was absent in the case of Mr. Smith, because he did not know of them.

I will commence that answer again:

“A. It is unfair to state that. In the first place, I do not think, Mr. McCutchen, that I said all these sales were negligible; that could hardly be the case; but there are some which are negligible, and there are others which have a more particular bearing, and all the sales which I have either made or have known about or have reason to believe my information is correct, enter into my ideas of what the value of this land is.

“Q. Taking the property lying easterly of the lakes, have you not said that the influence of sales of other property was negligible in reaching your values?

“A. I said that about some of them, yes.

“Q. Well, then, tell us any property lying easterly of the lakes which you placed a valuation upon and in the placing of which you were influenced by other sales.

“A. I doubt whether I can do it. I don't think that there was any direct influence. I might add this, that if I had known the circumstances of the Carolan sale it undoubtedly would have influenced me, but I did not know the circumstances. I mean by

that the exact acreage and the price as nearly as it could be learned.

(3506) "Q. Haven't you said within 15 minutes that would not have influenced you very much? A. I do not think so.

"Q. It is your recollection that knowledge of the Carolan sale would not have influenced you very much? A. That is my recollection."

I must say, in fairness to the witness, that I think that question was probably not thoroughly understood by him, but I do not think it is very important.

"Q. It would have influenced you, would it?

"A. I cannot say how much, it would probably have had some effect.

"Q. Now then you have told us all of the effect which a knowledge of sales in a locality easterly from the Spring Valley properties on Buri Buri ridge had upon you in fixing the values of property on the westerly side of that ridge?

"A. I have told you all that I can arrive at as far as my capacity to analyze my ideas goes."

Information such as a knowledge of these sales of properties east of the Spring Valley properties would have afforded is just the sort of information which a competent man would have had, and no competent man would have gone about the valuation of these properties without getting that information. When a witness tells us that because he considered the values of properties at Waddell Creek and at La Honda and at Woodside he could afford to discard, not only to discard, but not to seek and not to want, and that he would not have used had he had, information with reference to sales immediately east of and adjoining the Spring Valley properties, the charitable view to take of him is that he is incompetent.

He did not know whether a knowledge of the purchase by Carolan from the Howards would have helped or not, and that

reminds me of what I regard as a very satisfactory illustration of his incompetence.

You will remember he stated that when he was appraising these properties he heard that the Carolan property had been purchased; he said whenever he heard that a property had been sold, in a neighborhood in which he was operating, it was his practice to make a valuation of it and see how near he could come to the actual purchase price, and so he proceeded to appraise the Carolan property. He did not know the purchase price and did not want to know it for fear that it would influence him; it might get him off the scent. But at any rate, he did make a subdivision and valuation. He placed a value of \$750 an acre on that portion of the Carolan tract lying to the east, and he placed a valuation of about \$185 an acre on the portion adjoining the Spring Valley property, and he actually argued to you that, after he had made that segregation and valuation, that in and of itself gave him a check upon the valuation which he had placed upon the Spring Valley property. He did not realize at the time when he put a valuation of \$750 an acre on the easterly portion of the Carolan property that it abutted on the Whitman property which had sold for \$2,000 an acre. After he had made his segregation, he was asked whether he thought that really proved anything and whether the result would not have been the same if he had put on the westerly portion of the Carolan property the figures which he had put upon the easterly portion, and had put upon the easterly portion the figures which he had actually put upon the westerly portion. The absurdity of the so-called demonstration seemed to be beyond his ability to grasp.

I submit that any witness who would seriously tell a court that that sort of a subdivision and valuation proved anything demonstrated his incompetency.

And now let us go to the transcript for a moment and see what sort of an exhibition he made of himself with reference to this Carolan property:

(3767) "Q. Now you stated with respect to the Carolan piece on the east side that you had used that piece as a check. When did you appraise the Carolan piece?

"A. I think it was the 14th of April; it was during the month of April, 1914.

"Q. Was that before or after you had appraised the Spring Valley lands?

"A. At the same time.

"Q. Did you know at that time that the Carolan piece had been sold?

"A. I think I knew that it had been sold; I must have known of it; otherwise I would not have appraised it; but I did not know anything about the price.

"Q. You said you did not know the price?

"A. No, I knew nothing of the price.

"Q. I will ask you, Mr. Smith, what was your purpose in appraising any of these adjoining lands?

"A. To get the closest possible check on the work I was doing.

"Q. If you had known the price so that it could have influenced your appraisal it would not have been any check?

"A. I don't think it would have been a check; it is always apt to influence you if you know the price.

"THE MASTER: I don't see how it is a check at the end unless you do know the price?

"A. It would not be, your Honor; you would have to know the price; but I assume I would be able to find out the details sooner or later."

* * * * *

(3844) "The price that Carolan paid was not divided into subdivisions, but I graded it just as though it had been a part of the Spring Valley land and I wanted to see if the total of the units on my gradations would be fair to the back part of Parcel 90.

"Q. Didn't you say you did not want to know the price in advance, because it might be misleading?

"A. I don't know whether I said that, or not, but certainly it was very much better not knowing the price in advance."

And I may pause here to ask whether for the same reason he purposely kept himself in ignorance of all sales made in the district east of the Spring Valley properties.

(3845) "Q. Just tell us why?

"A. Well, if you know the value, or a certain fixed figure, you cannot tell but what subconsciously your mind is going to fit the figures you make and the figure you know,"—that would be an awful plight for a real estate man to find himself in, wouldn't it?

"Q. Why shouldn't it? Why is it not that just mental operation you should go through?

"A. Because you want to know whether in grading your land you are continuously consistent; if you are able to check here and there against something which you will find out afterwards and did not know before, it is a very much better check than if you are conscious all the time of the figures you are supposed to arrive at.

"Q. You would have had the same check, would you not, if you just reversed those values, put your easterly values on your westerly side, and your westerly values on the easterly side of the Carolan property? You would have had just as good a check, would you not?

"A. Not at all.

"Q. Why not? A. Because they are different grades of land. I put those prices on here, what I considered the proper price for that grade of land was.

"Q. Now can't you see that there is no value whatever in that? That you could have graded that land so as to prove anything in that respect? A. Not the way I graded it, absolutely not.

"Q. You said the Carolan price would be the maximum price

of property on the easterly side of Buri Buri ridge; from what does that follow?

(3846) "A. I did not say that followed; I said it would give you a check as to the maximum price you could expect to get from the west side.

"Q. Why does that follow at all? A. I think I fully qualified the back part of it, if I am not mistaken, because that is the only part that I considered comparable.

"Q. What sort of a check have you on the price paid for the Carolan piece, as to the back portion of the property?

"A. Only from the way I graded it on the ground, and without knowing what was paid for it.

"Q. What did he pay for it? A. I don't know.

"Q. Then what do you mean by saying that that would be the maximum price on the back part? A. I mean I graded the Carolan land just as though it was Spring Valley land. The total of that was \$353 an acre average. If Mr. Carolan paid an average price of approximately that, it is a mighty good check on the consistency and the accuracy of the gradations that I made."

* * *

(3847) "Q. This is the way it reads [referring to the previous testimony of the witness]. 'The Carolan piece would be an indication of the maximum price that you would expect any portion of the east side to have.' Of course you mean the easterly side of the Spring Valley tract, east of the lakes? A. Yes.

"Q. Now, I will read that:

"Q. Now, with respect to the Carolan piece, to what piece do you consider the Carolan piece to be comparable—the Spring Valley lands on the east side of the lakes?

"A. The Carolan piece would be an indication of the maximum price that you would expect any portion of the east side to have, and particularly I would compare the back part of the Carolan to the back part of the contiguous lands."

"Q. Now do you mean that?

“A. Taking that answer as a whole, yes, I mean that; I have in mind quite clearly the part that is comparable to the Carolan property.

“Q. When you say the Carolan piece would be an indication of the maximum price you would expect any portion of the east side to have, what do you mean? A. What I had in mind was this: I had graded that land, as I stated on the same principle, on the same basis that I had graded all of the Spring Valley land that I had been over up to that time; I went over and graded the Carolan land in the same way. If I found that the total I gave to the Carolan property——

“Q. Now, I have not asked you about that, Mr. Smith; I have asked you about this answer, here.

“A. I am trying to explain just what I meant by that answer. If I found that the total I had given in my gradations to the Carolan (3848) property was consistent with what the Carolans paid, it would show to considerable satisfaction in my mind that those portions of the Carolan property which were comparable to the Spring Valley lands would have been graded at the maximum that that type of land would be worth.

“Q. Did you mean all that in that answer?

“A. I meant just exactly as I have outlined.

“Q. When you say that the Carolan piece would be an indication of the maximum price that you would expect any portion of the east side to have, did you mean that no portion of the westerly slope of the Buri Buri ridge was worth more than the price per acre paid by Carolan for his property? A. No, I did not mean that.

“Q. Do you know anything about whether at the time Mr. Carolan bought that property, and at the time you appraised it, he had an entrance to it? A. I don't know anything of my own knowledge.

“Q. That is to say, you appraised it not knowing whether Mr. Carolan had an outlet or an inlet, or what?

"A. I heard some things at the time which indicated that he had trouble in getting an outlet, but that he had been able to get it.

"Q. Did he have it at the time you appraised the land?

"A. All I heard is what I have said; I heard that it was satisfactorily arranged.

"Q. Did you know what trouble he had? A. No.

"Q. Did you know, at the time you appraised the property, that there was any outlet to it? A. I only know what I heard at the time.

"Q. Do you know whether he had to acquire that means of access after he had bought the property? A. I don't know anything about it.

"Q. You appraised it without making any inquiry about that, did you?

"A. I appraised it on the assumption that what I had heard (3849) was correct, namely, that the entrance question had been satisfactorily worked out with Mrs. Whitman.

"Q. Would your price upon this Carolan property, or your figure upon the Carolan property, have been what it was, even though he had no outlet? A. It probably would have been less.

"Q. How much less would it have been?"—

Now, just listen to this, your Honor, because if he is reasoning upon any information here it is not disclosed in this record.

"A. I would say about the difference between what I gave it and what he paid."

Now, of course, there is no relation between those two things.

"Q. What was that? A. So far as I know it was \$310 an acre.

"THE MASTER: Q. What is \$310 an acre? A. The price that he paid.

"MR. McCUTCHEN: Q. Does this property of Mr. Carolan's which you have appraised at \$750 an acre immediately adjoin Mrs. Whitman's property? A. Yes, part of it does."

Now, I am not going to take the time to refer to it, but your

Honor will remember that his praise of the front part of the Carolan property was almost without limit; he said, as I remember it, that it was exceedingly fine stuff.

“Q. Is it the same character of property as Mrs. Whitman’s which it adjoins? A. No, it is not.

“Q. Is it better? A. I don’t think it is as good.

“Q. Haven’t you described the Carolan property as most ideal property? A. I don’t know that I said that; it certainly is very high-grade property in the front.

(3850) “Q. Have you not intended to give the impression that it was just about as fine as any property down there?

“A. I certainly have not, no.

“Q. Is it worth as much as the Whitman property, which it adjoins?

“A. I have not been over the whole of the Whitman property; it is worth less than much of that property.

“Q. You said you wanted a check, and so you appraised the Carolan property; why didn’t you appraise the Whitman property right adjoining it? A. Because I think there you get so far away from a similar type of estate land that the check element would have vanished.”

Now, this is the same witness who said without qualification—and I will call your attention to the record later on—in answer to a question put to him by counsel for the city, that the Waddell Creek lands which he had sold were better than the Spring Valley lands. He made that answer without qualification. And that La Honda lands, which he had sold, were better than the Spring Valley lands. And that Woodside lands, which he had sold—I will not say that he said in that case that they were better, but he did say that in many instances they were better. And he introduced, without the information being called for, on cross-examination, sales in those three localities for the purpose of demonstrating the correctness of his figures on the Spring Valley property.

I will read that question and answer again:

“Q. You said you wanted a check, and so you appraised the Carolan property; why didn’t you appraise the Whitman property right adjoining it?

“A. Because I think there you get so far away from a similar type of estate land that the check element would have vanished.

“Q. You were getting quite a distance away from the Spring Valley property when you got to the front of the Carolan property?

“A. That is true, but in order to get the Carolan figure I had to appraise it all.

“Q. Don’t you know that Mrs. Whitman paid for the property immediately adjoining the Carolan property, which you have appraised at \$750, \$2,000 an acre?

“A. It might be well appraised at that; in the first place, it is partly improved, and it is a very different type of property.”

Now we drove in from the Whitman property. These same improvements are almost negligible; some vegetation has been planted there, but to say that there is a difference as between \$750 and \$2,000 an acre would not command very much respect.

MR. SEARLS: Is the Whitman property back of the Spring Valley land?

MR. McCUTCHEN: No, it abuts on the Carolan property?

MR. SEARLS: Easterly of the Carolan property?

MR. McCUTCHEN: The westerly line of the Whitman tract adjoins the easterly line of the Carolan tract.

“Q. Different from the Carolan property? A. Yes, taking it as I recall it as a whole it is a different class of property.

“Q. How does it differ? A. In the first place, it is down in the heart of the larger Hillsborough places; the contour is different; it is less exposed (3851).”

I shall later call your attention to some testimony which has rather an amusing ring to it in view of this last statement.

“Q. Do you think that there is a difference of approximately

\$1700 an acre between the Carolan property and the Whitman property?

“A. I think if you were to deduct the improvements on the Whitman property, on a fair basis, allowing for the fact that it was a retail sale”—this is also interesting to me because I do not know what it means—“and not a wholesale sale, and then compare the two, you would be on a safer ground.

“Q. How would you allow for the fact that it was a retail sale, and not wholesale? How large was the tract?

“A. I don't know just what size the Whitman tract was.

“Q. What is your recollection of the size of Mrs. Whitman's tract? A. Offhand—I find I have no recollection of it.

“Q. Have you no opinion about that at all? A. No, it would be only just a guess.

“Q. Well, what is your guess? A. 110 acres, I have in mind.

“Q. Well, it is 142. What do you mean by saying it was at retail? I will put it this way: Why was that at retail any more than Mr. Carolan's purchase? A. I don't think it was”—He had drawn a distinction between the two a few moments before upon the score that the Whitman purchase was a retail purchase. “I think Mr. Carolan's purchase—it is a different thing talking about his purchase and the way I appraised it; I appraised it wholesale.

“Q. Do you mean by that that that was not the market value of Mr. Carolan's property? A. I think it was the market value of Mr. Carolan's property on a wholesale basis.

“Q. What do you mean by a wholesale basis?”

Now, remember, that he discovered that he had a check; these valuations which he put upon the Carolan property checked with the price that Carolan actually paid.

“A. I mean that I appraised the Carolan property as though it were a part of the Spring Valley property.

“Q. You appraised it as though it were a part of the Spring Valley properties? A. Yes.

“Q. But it was not a part of the Spring Valley properties.

“A. No, no more than the Scarpas property was.

“Q. Taking it as a piece of property by itself, what was it worth? A. Generally speaking, I would say it would be worth in the neighborhood of 50% more than I appraised it at.”

It was sold by itself; it was taken by itself when Carolan bought it, and it was the price that Carolan paid when it was taken by itself that this witness said checked his figure.

“Q. Now, Mr. Smith, let us see if we can follow one another for a minute. You said that when you made these figures, when you got the price of Mr. Carolan’s property, you had a check to know whether you were right, or not? A. Yes.

“Q. You have just stated that Mr. Carolan’s purchase of that property was a retail purchase, so to speak? A. Yes.

“Q. Now, at retail, that is to say, the basis on which Mr. Carolan purchased, your valuation would have been—what did you say it was an acre, \$350? A. Around that.

“Q. It would have been \$175 added to that, would it not, or \$525 an acre? A. Yes, but I do not think Mr. Carolan paid the retail market price.

“Q. One moment, please, and let us see if we can follow each other; you find then that Mr. Carolan got that dirt cheap, don’t you? A. I found he got it on what I would consider a wholesale basis.

“Q. But you say that you look upon Mr. Carolan’s purchase as a retail transaction, do you not? A. Compared with 22,000 acres, yes.

(2853) “Q. I am not comparing it with 22,000 acres; you said you looked upon the purchase of Mrs. Whitman’s property as a retail transaction, did you not, the purchase of the 142 acres?

“A. I said it probably would be considered a retail purchase.

“Q. And for the same reason, Mr. Carolan’s purchase would be considered a retail transaction? A. Well, it might be, but I do not believe it would be”—Now, how far back was it that he

said it was a retail transaction?—"in view of the rough and undeveloped character of the land and the size of the tract; it is about four times or a little less than four times the size of the Whitman place, and also considering the isolation of the district.

"Q. You say four times the size of the Whitman place?

"A. Yes.

"Q. What is the size of the Whitman place? A. 140 acres.

"Q. And the other is 420? A. Yes.

"Q. Do you say now the Carolan transaction was a wholesale or a retail transaction? A. I don't know anything about the circumstances of the Carolan transaction; he certainly got it on a wholesale basis.

"Q. How do you know—from the price he paid? A. That is just my opinion.

"Q. That is your opinion from the price he paid? A. Yes.

"Q. And looking at it as a retail transaction, you say that the property was worth 50% more than he paid for it?

"A. 50% more than I appraised it.

"Q. \$525 an acre?

"A. That is just speaking generally.

"Q. Do you say that Mr. Carolan did not get the property dirt cheap? A. No; I think he got it at a very cheap price. I think there were probably reasons why he got a cheap buy."

Were these taken into consideration by this witness in arriving at his check. "I think I am perfectly safe in assuming that it is the highest price that the back part of that land could have been sold for."

What is the highest price that the back part of the land could have been sold for, \$325 an acre? That is nearly double the price which the witness put upon the back part of the land. It appears to me that his whole treatment of the Carolan transaction shows that he cannot think with accuracy.

As I was reading the witness's testimony with reference to the Carolan transaction, I suggested to your Honor that it was rather

amusing when put alongside of testimony found in another part of the record. On redirect examination, counsel on the other side gave the witness another whack at the Carolan property, and I quote from page 3778:

“MR. SEARLS: What is the character of the land in the Carolan piece as compared with the land in the Spring Valley piece to the west of it, Parcel 90? A. The back portion of the Carolan piece is quite similar to the back portion of Parcel 90.

“Q. Take the rest of it? A. The front portion is very much finer than Parcel 90.

“Q. In what respect? A. Generally speaking it is much finer; it is better wooded, it lays better, closer to the highway; it cuts right down in a very high grade neighborhood, adjoins fine properties which are highly developed.”

Now let me take the time just for a moment to recall that I asked the witness how the front part of the Carolan property differed from the Whitman property, and he answered that the Whitman property was in the heart of the larger Hillsborough places and that the contour was different. Now what is the very high grade neighborhood down into which the Carolan property cuts? We know that it cuts right down into the Whitman property, but it seems that that circumstance does not reflect much value upon the front portion of the Carolan property. At any rate, I shall be interested in counsel's attempt to convince your Honor that there was as much wisdom in Smith's treatment of the Carolan purchase as the witness himself evidently thought there was. His lack of a sense of proportion finds abundant corroboration in the record. I say lack of a sense of proportion because that is the most charitable characterization I can find for it.

The witness cited the Santos sale as having a bearing upon the value of Parcel 49. The Santos property is at the top of the Honda grade, eleven hundred and odd feet above the floor of Woodside Valley, and sold for \$49 an acre. He admits that much

of it is rough land. On Parcel 49, one of the most beautiful pieces of the Spring Valley properties, he placed a valuation of \$42 an acre, a part of which he told us later was for lake view.

And by the way, when asked again to point to a piece of Woodside property that was comparable to Parcel 49, he referred to the Dimond property, which consists in the main of a steep hillside, and the purchase price of which was \$350 an acre; which fact I am satisfied Smith did not know when he referred to the Dimond property as comparable to Parcel 49.

When the disparity between that price and his valuation of Parcel 49 was called to his attention, he said he did not make much of the Dimond property. What the answer meant I do not know.

You will recall his comparison of the Morsehead and the Claffey properties. It is not of much importance, but it tends to show either the determination of the witness to take a prejudiced view or his inability to take an impartial view of the Spring Valley property. I quote from page 3476:

“Q. Do you regard the Morsehead property worth three times as much as the Claffey property? A. I regard the Morsehead property worth five times as much.

“Q. You regard its market value as being five times as great?

“A. My opinion is that it would be at least that.”

We saw the Morsehead property on our trip over the Peninsula. The La Honda grade skirts it for a long distance. It is very picturesque, but the greater portion of it is very steep. I am not by any means decrying it; I think it is an attractive piece of property. But I have no respect, and I do not think anybody else can have any respect, for the statement of a man, who claims to be an expert, that the market value of the Morsehead property is five times as great as that of the Claffey property. It would not be a severe characterization of this statement to say that it is most immoderate.

The testimony of the witness with reference to the value of the

Bassetti place as compared with the value of the Oscar Beatty piece throws a good deal of light on the value of his opinion. We saw these two pieces of property. While we are not real estate experts, that is to say, experts on value, when given an opportunity we can tell the physical characteristics of property as well as someone else.

I quote now from page 3420:

“Generally speaking, the Beatty property is a higher grade property, in my judgment, than the Bassetti property.

“Q. Worth $2\frac{1}{2}$ times as much?

“A. Well, let me see—I should say it was worth $2\frac{1}{2}$ times as much. Of course I would want to go over it a little more carefully. That is my recollection.”

Of course, the milk in the cocoanut here is the Beatty property had actually sold for so much, so that we are not left to the opinion of the witness to know what that property was really worth.

“Q. That is to say, it is your opinion that the pieces are worth relatively \$200 and \$80 an acre?

“A. Unquestionably that is true, particularly if you have the Beatty property for sale as an individual parcel and the Bassetti property for sale in conjunction, we will say, with the Scalmanini property.

“Q. Do you depreciate the Bassetti piece because it adjoins the Scalmanini piece? A. It would be depreciated if you had to take in the Scalmanini piece with it.

(3421) “Q. You did not value the Scalmanini piece as a part of the Bassetti piece, did you, or vice versa?

“A. I valued the Bassetti piece as part of the entire 22,000 acres, and I valued the Scalmanini piece the same.

“Q. Does that make it impossible for you to see that Beatty sale as a comparison? A. No, not at all.

“Q. Now, using it as a comparison, how would you apply it?

“A. In the first place, you would have to know the relative

or approximately the selling prices of the two parcels, were they separate units?"

That was a wise answer for the witness to make, was it not? He knew he could not get the selling price of the Bassetti property.

"Q. Well, take them as separate units, please. Considering them as separate units, do you say the one bears the relation to the other as of 80 to 200, or as 75 to 200?"

"A. I think that if the Bassetti piece were not a part of the large tract, you could probably get a higher price for it, for the reason, Mr. McCutchen, that the market is wider. That is the one first reason. There are others. That is the first and most important reason, though there are more prospective buyers.

"Q. That is to say, if the Bassetti piece were put on the market, independently of the properties of the Spring Valley Company adjoining it, it would bring more than the price you put upon it? A. It would probably sell quicker, at a higher price than the price I have put upon it were it a separate unit than the Beatty piece would sell at \$250 an acre."

Do you see how difficult it is to get an answer from this witness? He should have answered my question when I put the first one to him. It was plain, simple. "Can you use that as a comparison, and if so, to what extent?" But I have covered a page and I have not been able to get the answer.

"Q. How much more would it sell for if it were put upon the market separately than the price you put upon it? A. That is speculative."

Then Mr. Steinhart intervenes and says, "That is objected to as immaterial, irrelevant and incompetent, and as speculative. And, if your Honor please, that is getting into the point of subdivisional values again."

The objection was overruled.

"Q. Why do you say it is speculative? A. Because a man cannot tell what will happen if other things have not happened—after they do happen."

That is another wise answer. When he was seeking to depress the value of other Spring Valley holdings, he had no difficulty in arriving at a conclusion which he was willing to announce, but here we are endeavoring to get from him a simple statement with reference to the value of the sale of that Beatty property upon the property which lay right alongside of it, and we cannot get it.

“Q. Why do you say it is speculative? A. Because a man cannot tell what will happen if other things have not happened—after they do happen.”

Your Honor is not old enough to remember the elder Sothern in “Our American Cousin”—the father of the Sothern who has just retired from the stage. His performance of that was a very popular performance here in the early days, and I remember one of his speeches that I think would be a good side partner to this very wise opinion of Mr. Smith. He asked an American if his brother Tom liked cheese, and the American said, “I have not any brother Tom.” “Well, if you had a brother Tom, would he like cheese?”

“Q. In other words, you cannot tell at what price that property will probably sell for if it were put on the market independently of the other properties?

“A. Yes, certainly I can tell.

“Q. Why don’t you tell us? A. I will tell you what my opinion is; I think it would sell for \$100 an acre.”

We finally get it.

* * * * *

“Q. We will assume that this property is free, that it stands by itself, and that it adjoins the Beatty property, under which circumstances you say you could get \$100 an acre for it; do you mean to say that under those circumstances it would be only worth as much as 50% of the Beatty property?”

Now we still do not get an answer.

“A. I didn’t say that I thought the Beatty property was worth \$250 an acre.

"Q. I didn't say \$250; I ask you if under those circumstances it would only be worth 50% as much as the Beatty (3423) property, which would be \$200 an acre.

"A. \$200, yes, I think that is correct."

Now, I ask again to what respect is the opinion of a real estate expert entitled who will tell anybody that that Beatty property, acre for acre, has a market value 100% greater than the market value of the Bassetti piece, which lies alongside of it.

He testified on direct examination that La Honda lands were better than Spring Valley lands. He did not limit the statement to any particular part of the company's lands, and on that subject I quote from the transcript:

(3188) "Q. You have stated that you did business in the La Honda country. In the first place, Mr. Smith, I will ask you this question: What is the Spring Valley land suitable for?

"A. Mostly for residential purposes.

(3189) "Q. And what type of residential purposes?

"A. What we call the country estate.

"Q. Being the same type that you stated the La Honda country was suitable for? A. Yes.

"Q. In the La Honda country, what has been the amount of sales made by you, in dollars and cents? A. A little over \$388,000.

"Q. What was the amount of acreage included in those lands?

"A. 6,960.97.

"Q. Making an average per acre of how much? A. \$55.04.

"Q. And that covered a period of time between what years?

"A. 1911 to the end of 1913, I think; I am a little hazy on those dates, though.

"Q. Will you refresh your recollection as to those dates?

"A. Maybe I have them here. No, I have not the data here, but I will find that out.

"Q. I wish you would, Mr. Smith. The data you have given me shows it was from March, 1911, to June, 1915.

"A. I don't know whether the latter period included any

sales at La Honda; it may. It certainly did in the Woodside district, and on the ridge district.

“Q. In your opinion, how does the land in the La Honda country compare to the Spring Valley lands that you have familiarized yourself with?”

Now, if your Honor please, this witness was produced here for the purpose of telling us the value of the Spring Valley property, which, of course, included, naturally and necessarily, a consideration of the salability of these properties and the sort of demand that could be created for them.

“A. Well, in my judgment the La Honda country is a very much finer district than any portion of the Spring Valley lands of a similar grade. It is my judgment that the La Honda country is very much finer than the lands of Spring Valley that are of the same general type.”

Now, I merely remind you here that later on he testified the lands he had in mind were the lands lying westerly of the lakes.

Now, I want to ask what impression was intended to be conveyed by the witness when he made that answer? Did he not intend to convey the impression that if these lands were put upon the market, the La Honda lands would be upon the market in competition with them, and that in that sort of a competition Spring Valley lands would be at a disadvantage with La Honda lands. Is it possible to give any other construction or interpretation to that answer? “Well, in my judgment the La Honda country is a very much finer district than any portion of the Spring Valley lands of a similar grade. It is my judgment that the La Honda country is very much finer than the lands of Spring Valley that are of the same general type.”

“Q. How do the climatic conditions in the La Honda country compare with the climatic conditions on the Spring Valley lands?

“A. I can only give you what my experience is, because no one has kept any data further back than (3190) two years; and my own experience has been that the climatic——

"MR. McCUTCHEN: Just one moment. Well, I will not object.

"A. The climatic conditions of La Honda are very much better.

"MR. STEINHART: Q. In what way?

"A. It is warmer; the prevailing winds do not get into the La Honda country; there is very much less low fog. That is about the heart of it.

"Q. In point of foliage, how does the La Honda country compare with the Spring Valley lands? A. The growth is better.

"Q. In what way? A. The brush is more luxuriant, where there is brush; the timber is more beautiful, being redwood timber, while the only timber on the Spring Valley lands is some sort of fir, excepting where they have forested it themselves."

And that same sort of fir, if your Honor please, includes these beautiful specimens of Douglas fir which are found so plentifully on the Spring Valley lands.

"The general character is better suited for residential purposes.

(3200) "MR. STEINHART: Q. Mr. Smith, you gave the valuation of Parcel 5-2. How does that parcel compare with the lands you have sold in the La Honda country?"

* * * * *

"A. In a general way, it is comparable, but the La Honda country is much finer."

What did he mean by that? What impression did he intend to convey by that? He intended by that to convey the impression, as I said a while ago, that if these lands were put upon the market in competition with the La Honda lands they would suffer in that competition.

MR. SEARLS: You note he uses the expression, "the same grade."

MR. McCUTCHEN: Yes, he says the same grade, but he takes the whole of Parcel 5-2 here.

MR. SEARLS: This subsequent testimony to which you refer

as checking west side lands was made on redirect examination, not on cross-examination.

MR. McCUTCHEN: I have not finished this particular subject here, Mr. Searls. Let me go back.

“Q. Mr. Smith, you gave the valuation of Parcel 5-2. How does that parcel compare with the lands you have sold in the La Honda country?”

“A. In a general way, it is comparable, but the La Honda country is much finer.”

Now, this is quite pat, in view of Mr. Searls' suggestion.

“MR. STEINHART: Q. In what way is it much finer?”

“A. It is better timbered, better fields, better climate, better general location and environment, what we might call neighborhood. It is more accessible. There are other things, too, we could bring out, but that is enough.”

He wanted to be generous, “better climate, better general location and environment, what we might call neighborhood. It is more accessible. There are other things, too, we could bring out, but that is enough.”

Of course, that suggestion that there are other things, too, that we might bring out, does not smack of partisanship at all.

Until pressed rather hard on cross-examination, he had intended to give the impression that properties in La Honda would be more attractive to the ordinary purchaser than properties within the Spring Valley holdings; that they would find a more ready market, and that they were more attractive and more readily salable. I believe that to be a conservative statement, and if it is conservative, it carries a reflection upon the witness so severe as to make his advice unsafe and undependable. We made a trip to La Honda and therefore we are not compelled to take Mr. Smith's statement as to the length of time necessary to reach there.

He told us that, looked at from the standpoint of country estates, La Honda property was more desirable than the property to the west of the Spring Valley Lakes. He told us that La Honda

country was much finer than Parcel 5-2, which was comparable to it; that it was better timbered, better fields, better climate, better general location and environment, what he called neighborhood, and that it was more accessible. He told us that in going to this more accessible country he had very frequently encountered fogs at the top of the ridge which made it necessary for him to drive slowly. He told us that the lack of accessibility of the Spring Valley lands as compared with La Honda was reflected in his valuation. He told us, this man who said that the Husing sale did not throw any light on the value of properties north and south of it, that all the lands west of the lakes were comparable to La Honda lands, and at the same time he told us that the Spring Valley lands were not comparable to the lands in and about Easton and Hillsborough. He told us that the average of La Honda prices afforded a good check on the value of lands lying west of the lakes, but that sales of lands lying east of Buri Buri ridge threw no light on the value of lands lying west of that ridge, and that the price of the Husing property threw no light on the properties on either side of it.

It is impossible to do justice to his comparison of La Honda lands to the Spring Valley lands, to the very great disadvantage of the latter, in any other language than his own, and I quote: from page 3377. This may be repetition, but there is not much of it to read.

"In a general way it [parcel 5-2] is comparable [to the La Honda lands] but the La Honda country is much finer. * * * * It is better timbered, better fields, better climate, better general location and environment, what we might call neighborhood. It is more accessible. There are other things too you could bring out, but that is enough."

* * * * *

"The other things that I might bring out are the scenic character of the location; the general soil conditions as it appears to a

man who does not know anything technically about soils. The lack of wind in La Honda. The location generally is better."

* * * * *

(3378) "Its finer grade [referring to La Honda] is due to the conformation of the country, the topography, the way the canyons lie, and the amount of available land for various agricultural and horticultural purposes; the number of streams which are there, which in a measure comes under the scenic quality. There is also a much finer growth. * * * The La Honda country is on a through highway, so that it is much more attractive to the purchaser. It can be reached from the coast and from the valley by numerous routes, all of them very beautiful and very scenic."

* * * * *

(3379) "The enviroment that I have in mind which is so very valuable circles right around the Crockers and the Popes.

"Q. How many homes are there over there already built?

"A. There are none excepting Mr. Hanson's.

"Q. And Mr. Hanson's one home makes the neighborhood, does it?

"A. No, Mr. Hanson's home has almost nothing to do with it.

"Q. What does make the neighborhood in this uninhabited and unimproved country? A. The people who own the land.

"Q. The people who own the land and live on the other side of the ridge make the neighborhood of La Honda, do they?

"A. Yes, they certainly do.

"Q. And yet they do not live there at all; is that a fact?

"A. I don't think that any of them have spent a night there outside of Mr. Hanson.

"Q. And without wanting to take up too much time on it, that establishes a neighborhood, in your opinion, does it?

"A. Absolutely.

(3381) "Q. Have you ever driven over there [to La Honda] when the fog was so heavy that you had to drive slowly for fear you would come in contact with another machine? A. Yes, I have.

"Q. How often have you done that? A. Very often up the ridge but very seldom down in the valley.

"Q. That is the country that is so much more accessible than these Spring Valley lands, is it?

"A. At the present time it is much more accessible than the Spring Valley lands.

"Q. What do you mean by accessible—do you mean in point of time?

"A. I mean two things; I mean time and I mean the ease with which an automobile party can reach the country.

"Q. You have spoken several times of accessibility; you understand that this Spring Valley property is being used for a particular purpose, do you not? A. I have understood it is being used for a special purpose.

"Q. Does it occur to you that if it were to be sold in subdivisions that roads could be constructed through it?

"A. They would have to be or it could not be sold.

"Q. And at that time would these properties be more or less accessible than La Honda land? A. According to the type of development they would be more or less.

"Q. They would be more or less, what do you mean by that?

"A. I mean according to the type of road that was put in, they (3382) could be made more accessible or they could be less accessible, as they are today."

* * *

"Q. Is this lack of accessibility, as you have described it, reflected in your valuation? A. Yes."

Now, think of that. Here is a tract of land which is being valued by a man who says that he knows more about country estate property than anybody, and that this property is peculiarly adapted to and available for country estate purposes, and he says that he has actually depressed the value of it because it is in one parcel, and roads are not extended through it.

"Q. Are you familiar with the country at La Honda?

"A. Yes, I am.

"Q. Do you know the country from there to San Gregorio?

"A. I know it quite well.

"Q. Is San Gregorio a foggy country? A. Very.

"Q. What obstruction is there to prevent the fog from coming up to La Honda from San Gregorio?"

Now, mind you, this man said he had gone over there twice a week for five years.

"A. I have always assumed that it was about 9 miles of cross ridges.

"Q. You have assumed that it was 9 miles of cross ridges?

"A. Yes.

"Q. From San Gregorio to La Honda? A. Thereabouts.

(3383) "Q. Do you say, then, there is not a canyon leading directly from San Gregorio up to La Honda?

"A. There is a canyon.

"Q. What do you mean by saying it is cross ridges?

"A. Well, the canyon is tortuous.

"Q. It is tortuous? A. Yes.

"Q. What is to prevent the fog from following the sinuosities of that canyon and getting up to La Honda?

"A. I don't know, Mr. McCutchen, but it must be something similar to the condition prevailing down the San Mateo Creek; I am quite sure there is not a strong wind.

"Q. Have you ever seen San Gregorio when it was not enveloped in fog? A. Certainly I have.

"Q. How often? A. I don't know but very often.

"Q. Have you frequently seen it when it was enveloped in fog? A. Yes, I have.

"Q. How often have you seen that?

"A. I cannot tell you that.

"Q. More than the eight times that you have seen fog at La Honda? A. Oh yes, much more.

"Q. Many more than that? Have you ever seen fog at San Gregorio when you did not see it at La Honda?

"A. Certainly I have.

"Q. How frequently have you seen that?

"A. I would not care to hazard a guess."

Now, I do not regard this as of great importance, except as emphasizing the prejudice of this witness against Spring Valley properties and his unwillingness to see the situation as it was.

As throwing some light upon the accuracy of his statements, I cannot resist calling attention to the map of La Honda-San Gregorio district in connection with his statement that San Gregorio was a very, very foggy locality, but the fog did not reach to La Honda because there were nine miles of cross ridges between San Gregorio and La Honda. The fact is, as shown by the government map, that La Honda is due east from San Gregorio and that San Gregorio Creek, on which La Honda and San Gregorio are located, runs almost due west from La Honda to San Gregorio, and that instead of there being nine miles of cross ridges to prevent fog from drifting from San Gregorio, there is no ridge whatever, and when the witness states that the canyon leading from San Gregorio to La Honda is tortuous, he is flatly contradicted by the government map.

La Honda is a very picturesque country; so is San Gregorio. La Honda might be very attractive and undoubtedly is to some purchasers; but considering the uses to which the two properties might be put, they are no more to be compared to each other than bungalow sites on the Truckee River can be compared to suburban homes about Berkeley and Piedmont.

If a man doing business in San Francisco owned property in La Honda, he would not go there, at most, except to spend the week end, and the likelihood is he would not go as often as that. In other words, no business man could afford to own a place in

La Honda unless at the same time he had and maintained a home elsewhere.

I think it is conservative to say that if the Spring Valley properties were on the market, that for every single purchaser who might be attracted to the La Honda district, at least fifty would seek the Spring Valley district. That, of course, is not testimony, but we are all just as well able as Mr. Smith to express an opinion upon the relative merits of these two sections.

He told us on direct examination that the Waddell Creek lands were very much better than the Spring Valley lands, and he did not limit the comparison to any part of the Spring Valley land. He included all of it. I quote again from the transcript (3467-8). On direct examination he said in answer to the question:

"And this portion that you have described, is that land of a similar type to the Spring Valley land, or is it better?"

"A. In my judgment it is very much better.

"Q. In what way? A. It is more picturesque and has a better estate value."

Now, counsel may have some interpretation to put upon that which will comport or be in consonance with the explanation which the witness made upon cross-examination, but again I am not willing to accept the witness' explanation when he was confronted with this statement on cross-examination.

(3468) "I intended to compare it [the Waddell Creek lands] only in a remote degree of cost with the Pilarcitos Canyon."

That statement is manifestly lacking in candor. He intended to make the comparison general just as his answer shows. He intended to give the impression that this Spring Valley property, if put upon the market, would come in competition with property like the Waddell Creek land, which he said had a better estate value, and which would therefore command a better market; and he did not limit it to the question of cost, as you will see later on.

"Q. Mr. Smith, you had stated in answer to Mr. Steinhart, had you not, that the Spring Valley lands were most suitable and

most valuable for country estates? A. That is my opinion.

"Q. And when you state here that this land along the coast had a better estate value, you did not mean to say that it was more salable than the Spring Valley lands in subdivisions, did you? (3469) A. It would be—

"Q. Answer the question 'yes' or 'no' and then make your explanation.

"A. If I am allowed to make an explanation I will be very glad to answer it. I would like to have the question read.

(The question repeated)

"A. It would be more salable if the price were the same."

What would be more salable? The Waddell Creek lands?

"Q. Then you mean that it is better acre for acre than the Pilarcitos lands? A. Just a moment, Mr. McCutchen, and I will answer you; if the price were the same, the circumstances were the same, the general location and so on, as it is.

"Q. Well, you know that the distance is not the same, so why introduce that? A. No, but we have to introduce the question of price; we have to introduce the question of price."

But he has not introduced it.

"If you bought the Pilarcitos Canyon we will say at \$200 an acre and you bought the Waddell Canyon at the relative value that would exist, which probably would be about \$20 an acre, the Waddell Canyon would be ever so much more salable and would sell very much quicker.

"Q. In other words, the Pilarcitos property is worth ten times as much as the Waddell property, acre for acre, is it?

"A. Very nearly that, taking into consideration of course the conditions which exist, that is, the relative location, and assuming that the Pilarcitos Canyon could be thrown on the market as a separate unit." * * * * *

(3470) "Q. What do you mean by saying it has a better estate value? A. It has a larger creek also, which is of considerable importance."

Now, that is his answer as to the better estate value.

“Q. And notwithstanding that you give the Pilarcitos a value compared with that as ten is to one? A. That is all right; that is my opinion of the importance of proximity to a market.”

Put that alongside of his use of La Honda land as a comparison.

“You would probably find, Mr. McCutchen, that there were nine people who would be willing to motor as far as the Pilarcitos Canyon whereas there would be only one person who would be willing to go down as far as the Waddell property.”

That is the property that has better estate value. That is the property which the witness said without qualification, when he was interrogated by counsel for the city, was better than the Spring Valley property, and by Spring Valley property he meant the whole of the property on the Peninsula.

“Q. Did you realize that at the time you made the answer to Mr. Steinhart?

“A. Absolutely, Mr. McCutchen, and I realized that when I was on the land and that is why I say the Waddell sales must enter and must be considered in my experience.”

Your Honor may be able to follow that, but I cannot.

I also call attention to the witness' subdivision of that portion of Parcel 49 lying between the grant line and the Canada road, which he said he had subdivided into four parcels and had numbered them 8, 9, 10 and 11.

THE MASTER: Is Parcel 49 the Husing piece?

MR. MCCUTCHEN: Next to the Husing piece, it is north of the Husing piece.

He says: (3575)

“I have appraised it at \$11,375, which is a little less than \$100 an acre”; that is to say, the portion lying between those two lines. The witness repeatedly said that if he were looking at the parcels independently of one another and as retail purchases he might increase his value from 33 1-3% to 50%. Now,

bear that in mind as we read this further statement with reference to this parcel 49: "Now, if that were given to me for sale independently, nothing else tied to it, and if I were to assume that the balance of the lands surrounding it or in the vicinity would be improved with a proper degree of improvements, a proper type of improvements and sold to a high grade class of people, which I think is a fair assumption, I believe that that land would bring close to \$250 an acre, some of it would be worth more and some less."

In other words, that portion of Parcel 49 taken by itself was worth more than 50% in excess of the aggregate of the figures placed upon the units in that portion of Parcel 49. In the same connection he testified that the portion of that parcel lying westerly from the Canada Road would be worth 50% more by itself than the figures he had placed upon it. The westerly portion would be worth 50% more and the easterly portion more than 150% in excess of his figures. If counsel on the other side has the ingenuity to reconcile the statement that for retail purposes the values placed by this witness upon those units should be increased from 33 1-3 to 50% with the statement that in this particular case the land lying easterly of the Canada road would sell for \$250 as against less than \$100 as the aggregate of his unit valuations I would be glad to have him make the reconciliation.

And while I am referring to this Parcel 49, I am reminded of what the witness said with reference to that portion of it lying east of the Canada road as compared with the 22 acres below Woodside which had been purchased by Mr. Fitzhugh, and I quote from page 3580:

"Q. Isn't that very much more desirable property than Mr. Fitzhugh's 22 acres that you referred to? A. Taking it as a whole I don't think it is very much more desirable property.

"Q. Is it as desirable? A. I would say that it is as desirable property but it would not be marketed as quickly as the Fitzhugh 22-acre piece.

“Q. That is to say, this is as desirable as the property for which Mr. Fitzhugh paid \$600 an acre? A. Yes, I think it is.

“Q. And yet you valued it looking at it in that subdivision at \$250 an acre?

“A. That has very little to do with it. It is just the same as we had yesterday with reference to the Waddell Creek and the Pilarcitos, only that that comparison is a little more stretched; it illustrates the point; there are so many things that have to be taken into consideration.”

The excerpts which I have taken the time to read to your Honor seem to me to demonstrate quite conclusively the inability of this witness to make anything like an accurate comparison, a quality that would seem to be almost indispensable in a man called upon to perform the sort of service which he was expected to render in this case.

Another matter to which I think it proper to call attention is the method pursued by the witness in arriving at values of the various parcels of land described in the inventory. I have said the method employed by the witness, but that gives his work a dignity which candidly I do not think it deserves. I do not think it is possible for anyone who will read his testimony carefully to say that he followed any method. We thought at one time we had gotten him to the point, that is to say, I thought your Honor had gotten him to the point, where he was going to say that he had a base or standard with which he started, but when we got him up to that point he shied off and said no, that he might have done it that way, but he did not. At the risk of having it thought that I am taking up time unnecessarily, I shall read his testimony on that subject. While I do not think it will aid very much in the ultimate question to be determined, it will, I think, emphasize the claim which I have heretofore made, that the witness is altogether lacking in the qualifications necessary to enable him to give the court anything like a correct impression as to the value of these properties.

He stated, not once but many times, that no one could value all these parcels who would not first subdivide or grade them, and realizing the necessity of grading and subdividing them, he proceeded to do that, and the testimony which I am now about to read shows how he did it.

(3442) "Q. Have you valued the property just as if it were now divided into those 208 or 210 subdivisions? A. Certainly not.

"Q. That is to say, you have valued it at a very much smaller figure than that? A. I have not given a value to 208 subdivisions; I have given a value to the tract.

"Q. Haven't you given a value to each subdivision?

"A. I have for the purpose of convenience in referring to them.

"Q. Then that does not represent at all the value of the respective subdivisions?

"A. Yes, it represents the value of the individual parcel in conjunction with all the other parcels.

"Q. That is, it represents those values relatively, only?

"A. If by relatively, you mean in conjunction with the other parcels, yes.

"Q. That is to say, you have taken the entire parcel, and have placed values upon individual parcels, but those values are only relative to the whole?

"A. Well, I think I would have to answer that in just the same way, Mr. McCutchen, excepting that I graded the land, I gave a value to each natural subdivision, if you like, or topographical subdivision, as nearly as seemed best in my judgment to do so, and whatever proportion of those fell within the lines of these parcels was given to the parcel.

"Q. Take an individual instance, and explain with reference to that instance what you mean? A. If we had the graded maps here, it would be very much easier.

"Q. Well, let us take the Parcel 164, for instance.

"A. I don't know that I can actually do it without the maps.

"Q. Do the figures that you have placed on Parcel 164 represent its value disconnected from the remainder of the property?

"A. I would not say that, no; would qualify that by saying it represents its value in connection with the rest of the property."

Now, this all becomes very important in the light of our effort later made to get from the witness some statement about the percentage that he had added to one property or taken from another property because of the relation of the one or the other to the whole.

(3443) "Q. And that is much less than it would be if you considered it alone?

"Q. I am not prepared to say that that is the case.

"Q. You said it with reference to other property, didn't you?

"A. Yes.

"Q. Why have you any doubt with reference to the application of the same doctrine or rule as to Parcel 164?

"A. It is not a doctrine or a rule. I said in some instances the value was increased and in some cases decreased because of its connection with the large tract.

"Q. You stated awhile ago that the values you have given the entire tract do not represent the aggregate of the values of the individual parcels.

"MR. STEINHART: I don't understand that he stated that.

"MR. McCUTCHEN: I am asking him the question. He did state that very clearly.

"MR. STEINHART: I do not think he did.

"A. There seems to be a confusion of ideas here. The value of the entire tract is the sum of the values of all the parcels which I have stated here on the witness-stand, but when you say that I have said the value of the entire tract is not the total of the values of the separate parcels, it is inaccurate unless you specify that what you have in mind when you refer to separate

parcels is the separate parcel as a separate unit, for sale as a separate unit, and capable of being sold as a separate unit.

“Q. We will put it that way, we will use your own language; we will treat it as a separate unit and capable of being sold as a separate unit: Do your values upon them represent the market value? A. I would say not.

“Q. How far do they fall short of the market value? * * * * *

(3444) “A. Somewhere between 25 and 30%, according to the type of property.

“THE MASTER: Suppose we take any piece at random: Here is piece 49, for instance, next to the Husing place, at the head of the Upper Crystal Springs Lake. Suppose you find a piece somewhere else, of fairly similar acreage and entirely comparable with that, where you had a sale at the time; we will make it a supposition that they are practically identical, and you have the sale figured, we will say, of the other piece at \$20 an acre; how would you use that in connection with this parcel 49? Do you apply any formula that you evolved?

“A. There is no definite formula, your Honor, that you can apply. It depends very largely on a man's experience in handling that particular type of land.

“Q. Well, in a particular case, what would you do?

“A. I don't know that I fully understand the question.

“Q. Of course, it is rather a violent hypothesis, but all these comparisons cannot be exact; suppose piece 49 were found down in Woodside, or La Honda, or any other place where you would consider in your own mind you have a fair comparison, so that piece for piece a photograph of the two would look identical, and communication, and all that sort of thing being identical; in other words, have 49 somewhere else, and a sale of that particular piece at \$20 an acre; at what would you value 49 here in the Spring Valley property?”

That was being put to him very clearly and it called for a statement from the witness of some basis or starting point.

"A. In all probability there would be a difference, I should say, of about 33 to 35% roughly speaking less because of the co-sale valuation."

* * * * *

(3445) "Q. Are you prepared to say that these Spring Valley properties that you have valued, if they were owned in the separate individual parcels in which you have valued them, would not have a market value twice as great as the aggregate of the values you have placed upon them?"

"A. I don't think they would.

(3446) "Q. You don't think they would? A. No.

"Q. Would they have a market value 75% greater than the aggregate of the values you have placed upon them?"

"A. I doubt that very much.

"Q. Are you quite sure of that? A. I am quite sure of that.

"Q. Would they have a market value of 50% greater?"

"A. That is closer, but I am not sure they would have that much.

"Q. You are at least inclined to think that they might have a market value 50% greater than the aggregate of the values you have placed upon them?"

"A. No, I am not inclined to think that; I say, that is getting closer to what they probably would have.

"Q. You said awhile ago from 33 1-3% to 50%, didn't you?"

"A. That is my opinion.

"Q. And that is as close as you can get to it for us?"

"A. That is as close as it would be of any use." * * * * *

"Q. Well, take the piece on the other side, to the south of the Husing property, what would that be worth if it were owned separate and apart from the other property?"

"A. It is just a guess, Mr. McCutchen, to answer that; I am perfectly willing to hazard the guess, however. It would be approximately 50% more. * * * * * (3447) there are certain parts

of the land I would not have appraised as high [if appraised separately] as I did.

“Q. What part have you in mind now?”

Now, this becomes very important because he said his values were relative.

“A. I would not have appraised them as high as I did if they were separate and isolated parcels. I have particularly in mind the land which lies to the northwest, all that great big area over there.

“Q. What was your rule or ratio: How are we to determine that?

“A. You cannot determine it. That is why I say you have to use an approximate value of from 25 to 50%.

“Q. How much did you put on these lands to the northwest because they were owned with the other lands? A. I don't know.

“Q. How are we to ascertain that?

“A. I didn't suppose you would have to ascertain that.

“Q. You were very particular to grade all these lands and to put prices on them, weren't you? A. Yes.

“Q. That is to say, you did not content yourself with putting a price on an entire parcel, but you subdivided parcels?

“A. I graded it.

“Q. How much did you put on any one of these lands to the northwest because they were part of this entire tract?

“A. You mean how much did I add to it?

“Q. Yes. A. I don't know.

“Q. Can you tell us an individual parcel to which you added one cent because of that? (3448) A. Well, Mr. McCutchen, I didn't have that in mind on the ground.

“Q. Answer my question please.

“A. I find it a little difficult to answer the question. I know positively that Parcel 101 would never have been valued in my mind and has not a value of \$15 except in connection with the rest of the land. * * * there is absolutely no question that Parcel

106 on Map 2 has anywhere near the value I have given it excepting in connection with the rest of the land. * * * Take Parcel 12, Map 2, that is another case where there is not a question in my mind. The same is true and very forcibly true, of Parcel 43, the larger one, the 312 acres—”

* * * * *

“Q. I say is it also true of 5-2?

“A. It is unquestionably true of a large portion of 5-2.

“Q. And yet you went over 5-2 and put a valuation on the individual portions of it, did you not? A. Yes.

“Q. We will take the part of 5-2 which includes the stone dam, which you valued at \$600 an acre; did you put any part of that value on because it was a part of an entire property?

“A. Well, Mr. McCutchen—

“Q. Answer the question ‘yes’ or ‘no’ and then make your explanation.

(3449) “A. I cannot answer it.

“Q. You cannot answer it? A. No.

“Q. The fact is, you don’t want to say ‘yes’ because it would not be the fact: Is that it?

“A. Certainly not; I want to say ‘yes’ if ‘yes’ is the right answer, but Mr. McCutchen, I cannot tell you here ‘yes’ or ‘no’ to a question like that. The property around the stone dam that I gave \$600 an acre to is a beautiful piece of property; it would not be worth \$600 if it were an isolated parcel owned by one person and bottled up in there.

“Q. It would not? A. No, it would not.

“Q. Do you mean it would be worth \$600 an acre if part of this entire tract were used for what purpose?

“A. I didn’t understand that question.

“Q. For what purpose did you put a valuation of \$600 an acre on it? A. To arrive at a fair valuation of the entire tract.

“Q. And not for the particular purpose of determining what that particular acreage, including the stone dam, was worth?

"A. I knew what that land was worth because it was a part of the whole thing, and I could treat it and give it the same treatment; in other words, it was accessible over the same roads that existed; there was no possibility of gates shutting it off, and so on.

"Q. Is that accessible?

"A. It is as accessible as any of the canyon is.

"Q. Do you mean to tell us that when you placed that value of \$600 an acre on that stone dam, that you were considering it in connection with the other part of the property?

"A. I considered it as a part of the whole, absolutely.

"Q. What relation does it have to the whole, so far as that valuation is concerned? How does its association with the whole make it worth \$600 an acre?

(3450) "A. I don't know that it does make it worth \$600 an acre.

"Q. What relation has the one to the other?

"A. I don't know what you mean.

"Q. You don't understand that question?

"A. No, I don't understand your question.

"Q. You don't know what I mean by relation of one part of property to another?

"A. I don't know whether you mean relation in size, or value, or just what you mean.

"Q. You know the meaning of the word 'relation', don't you?

"MR. STEINHART: I object to that your Honor, as immaterial, irrelevant and incompetent.

"MR. McCUTCHEN: Q. I ask you again, what relation has this stone dam property, valued by you at \$600 an acre, to the remainder of the property, so far as your valuations of the remainder are concerned?

"A. Well, I still feel very hazy about what your question means, but as nearly as I can understand, the relation is that it is a fine part in the center of the tract.

"Q. Mr. Smith, you made these individual valuations to show you knew just what you were doing, didn't you?

"A. No, I made those individual gradations, not knowing that they would be used at all except by myself, to arrive at the total value. I did not know, Mr. McCutchen, that we were going to divide it up into the parcels that the company used.

"Q. When you went about the valuation of this property did you go over the whole tract and place a value upon the whole tract? A. No."

* * * * *

(3451) "MR. McCUTCHEN: Q. Mr. Smith, what relation has the value of the stone dam acreage on which you put \$600 per acre to the Claffey tract?

"A. I don't think that it has any particular relation.

"Q. Has it any relation?

"A. It has to the man who is buying the 22,000 acres.

"Q. You don't know anybody who is going to buy the 22,000 acres, do you? A. That could have been sold in 1913.

"Q. Well, unfortunately, we have to fix the value of this property without the aid of that purchase. Now, in view of that, what relation has the stone dam property, on which you put a value of \$600 per acre, to the Claffey tract?"

* * * * *

(3452) "A. I could not give any ratio of relation, but it has a certain relation."

* * * * *

(3453) "Q. You graded the land for the purpose of ascertaining the values of the individual parcels in the grading, didn't you, and for no other purpose?

"A. I graded the land for the express purpose of finding out how much of one grade of land there was, and how much of another grade, and when I got all through, the total would be the value of the property.

"Q. Now, I will ask you again: Can you point us to any

tract of those that you valued and tell us any percentage that you added to it or deducted from it because of its relation to the rest of the property?

“A. I have already pointed out somewhere I am quite sure the value was increased, but I tell you I cannot tell the percentage.

“Q. Not being able to tell us the percentage, why do you say you added or deducted anything?

“A. Well, I have a pretty good knowledge of what the land is, and I know there were certain influences undoubtedly that entered into the value of that land. When a man is on land, Mr. McCutchen, that is the time to value it.

“Q. In other words, this is not the place to value it.

“A. This is the place only to give your deductions or the results of your valuations, yes.

(3454) “Q. You worked on this in your office for four weeks, didn't you? A. Approximately that time.

“Q. Have you any note or memorandum that will show that you added to or deducted from these pieces one cent on account of their contiguity to other pieces?

“A. There were no additions made in the office, there were no deductions made in the office; the appraisal was made on the land.

“Q. When you went upon the land with your Brunton compass and tape-line and measured off these various parcels into subdivisions, did you put a value upon the property then and there? A. Yes, sir.”

* * * * *

(3590) “Q. Now, Mr. Smith, I want to ask you again, when you placed these valuations upon these segregations did you place the value upon each segregation with reference to its relation to the whole property?”

The witness is still in doubt about what the counsel means. He answers:

“A. If I fully understand what you mean, I certainly placed a valuation on the small gradations or separate parts of the land

with reference to the whole tract; by that I want it clearly understood that I had in mind the whole tract as a single unit, and was endeavoring to find out and ascertain the exact value of the whole tract."

I say that is manifestly not the fact.

"Q. Then you did not intend, when you placed your value upon a particular subdivision of a parcel to mean that that particular subdivision was worth the figure you placed upon it?

"A. It was worth the figure I placed upon it as a part of the whole tract.

"Q. But not as a unit by itself?

"A. Not necessarily; it might be worth more or it might be worth less; as I have explained. For instance, in the case of Parcel 89 that you were asking me about yesterday, the lower part of Parcel 89 certainly would not have been worth as much as a separate unit as it was worth in conjunction with that portion of Parcel 92 which adjoins it."

Now, to that extent the witness may very well have been telling the truth; in other words, his valuation of a particular parcel may have been influenced by its association with or relation to a parcel immediately adjoining it but to say that he placed a valuation upon the property south of the lake because of its relation to the property in the northwest corner of this 22,000 acre tract is absolutely and manifestly not the fact.

MR. SEARLS: I don't suppose that he ever intended that construction on it either, Mr. McCutchen.

MR. McCUTCHEN: Well, if you can make anything else out of this witness's testimony than that that is what he says you can do more with it than I can. I am quoting his testimony, I am not paraphrasing it.

I will read back:

"Q. Then you did not intend, when you placed your value upon a particular subdivision of a parcel to mean that that particular subdivision was worth the figure you placed upon it?

“A. It was worth the figure I placed upon it as a part of the whole tract.

“Q. But not as a unit by itself?

“A. Not necessarily; it might be worth more or it might be worth less; as I have explained. For instance, in the case of Parcel 89 that you were asking me about yesterday, the lower part of Parcel 89 certainly would not have been worth as much as a separate unit as it was worth in conjunction with that portion of Parcel 92 which adjoins it.

“Q. Let me read you this testimony which you gave in answer to a question by Mr. Steinhart, reading from page 3302:

(3591) “‘Q. Mr. Smith, in making your valuations as you have stated, you went upon the land: Is that correct?

“‘A. Yes that is correct.

“‘Q. In going upon that land to make your valuations, did you consider the different portions of each portion you were valuing?

“‘A. Yes.

“‘Q. What did you do in that respect?

“‘A. What we call grading. I figured out approximately how many acres there were of a certain type of land, or of a certain unit of land, not necessarily all of the same type, and figured out how much that land was worth as a unit.’

“What do you mean by ‘that land’, as used in that answer?

“A. I mean the land in the area I had under consideration.

“Q. You mean the land in the particular subdivision or segregation? A. Yes.

“Q. Now, you say you did not mean to determine the value of that land as a unit, do you?

“A. No, Mr. McCutchen, I don’t; the answer I have given this morning fits exactly with that, only perhaps I did not amplify the first answer quite enough. All you have to do is to add to the first answer that I had in mind a whole parcel; that I seem not to have stated, but,, of course, that is the case.

“Q. Now, let me read this further testimony to you:

“‘You say you figured out the acreage; how did you do that?’

“‘My experience has taught me how to size up the acreage. That was the first way. Another means was to check that by the use of instruments which I had with me. A final check, which was conclusive, was how the sum of those various gradations totaled with respect to a known total, for instance, a quarter section of land, which was a known total.’

“What do you mean by that?

“A. I used the county map—

(3592) “Q. No, I ask what you meant by that answer?

“A. This is what I meant by that answer: A quarter section usually has 160 acres in it; that had all been verified by me at the courthouse at Redwood City, and in some instances I found variations of a few acres more or less, and I had a memoranda of those acreages. When I was appraising land in that quarter section, I, to the best of my ability, endeavored to keep the segregations within that area so that I would have a means of checking my idea of the acreage.

“Q. Then, again, when you were shown these tabulations, or these segregations, you were asked:

“‘And the figures to the left-hand side represent what?’

“‘A. The first column represents the number of separate units; the second column represents the acreage in that unit; the third column represents the rate per acre; the fourth column represents the total value.’

“The total value of what? A. Of the unit.

“Q. Now, you say that it does not represent the total value of the unit, but that it represents simply a part of the whole, do you?

“THE MASTER: I do not think there is any contradiction in the two answers, Mr. McCutchen, I understand the witness to mean it is a unit as respects the part he is appraising, but he has always in mind the relation to the whole. Let me ask a

question here, Mr. McCutchen, to see if I can get it straight in my mind.

“Q. You spoke this morning and you made some reference yesterday in your explanations to my questions, of the use of percentages, either of addition to or subtraction from another figure; that suggests to my mind that possibly in different places in regard to this property, you had a base figure: Is that a fact?

“A. You could hardly say that, your Honor.

“Q. Well, you had to start with something, if you were using a percentage?

(3593) “A. That is true; I might have gone onto the land that way, but I did not. I went onto the land using as a base my knowledge, as nearly as possible, what that kind of land would sell for.

“Q. Well, that seems to be what I mean; suppose we take the section of land from the southerly end of the Crystal Springs reservoir up, let us say, to the concrete dam, the land on the east side of the lake; all of that land, as I recall it, is more or less of a type, with differences in grading that land, did you say, well, I will fix a base figure of so many dollars on this and increase the better part a third, and perhaps in many places decrease it by a half, or something of that sort?

“A. No, that could not be the method in residential land, your Honor. It is necessary to go onto the land, and—

“Q. I am assuming you are on the land.

“A. (Continuing)—and figure what you could sell that land for under the conditions, of course, which are in mind. That is something that can only be determined by a person who has had experience in the residential type of land.

“Q. Of course, I realize that, Mr. Smith. What I am trying to do is for you to perform a mental operation; you could not go on there and receive an inspiration from somewhere as to the value of the land; you must perform some sort of a mental operation. It would be conceivable to me that you took a certain

section there and reason like this: Well, I consider that this type of land, within a certain acreage, is worth \$50; here is a piece that is at least a third better, and so on; you didn't do that, did you?

"A. No; that is correct, of course, but I didn't do that.

"Q. What did you do? A. I did that and I didn't do that."—

Now, your Honor may be able to tell what he did but if you can you are a wizard.

The answer continues:

"Take the portion of land you have outlined, for instance: I went on that land and I would look it over very carefully, and I (3594) would figure that it was worth, we will say for an assumption, \$125 an acre; now I would arrive at that \$125 an acre by having in mind what other land was worth which would be as nearly similar as possible, considering location and other things, or such land as might be in competition in the market with the property I was looking at.

"Q. Now, Mr. Smith, I can conceive and follow your mental process if you went there and looked at the land, having in mind your experience as a dealer and the judgment which has been formed by that experience, and having in mind certain specific sales, and then saying: Well, this whole tract of land can be figured at \$125 an acre; but when you have done that, there is no necessity apparent to my mind why you should grade it; if, however, you did not care to use that judgment formed by experience in that way, and desired to grade it, as you have done, what I am trying to get at is the mental process by which that grading came about; I can conceive that you would take a certain piece of average value and call it \$100 and then decrease and increase from that as an average within that parcel; I have not any other very clear process in my mind by which that could be accomplished.

"A. I find it a little difficult to explain to your Honor just how land of that type conveys its value to you, excepting

by stating that in going over the tracts unit by unit, type by type, we might say, you know approximately what that land would sell for on what we are considering as a wholesale basis; you know that if you had experience in handling land.

“Q. What did you need to grade it for?

“A. Because it is just as impossible to tell what land is worth without doing that as it would be to tell what a herd of cattle would be worth by looking it through.

(3595) “Q. Take Parcel 37, that I questioned you about yesterday: That was one where I noticed a great many odd figures, as I explained yesterday, and which excited my curiosity; you had 8 acres at \$133.33, total \$1066.64. I asked you how you arrived at that, and you said that probably you increased \$100 by a third; now, what is the significance of \$100? There was actually no piece there which you graded at \$100 in that particular parcel?

“A. What I meant was this: In that particular parcel, and I think in two or three others, perhaps 72 and 90 are the ones, I am not perfectly sure of that, though, but in that particular parcel I went over the ground, starting from where the Belmont road strikes that land, in other words right near the poor farm, and I graded the entire tract.

“Q. I can easily see from that why it was you would not have any \$100 in that particular tract; that \$100 might occur in one of the adjoining tracts.

“A. When I finished, I found that the tract was, as a whole, tied in and as a part of 54 and 36 and so on, which lie to the north of it, that it was better land, and that really it should have a higher valuation than I started out with. When you are doing field work, that is often the case, you find that one thing improves the other, and so on.

“Q. Then let me get that straight; I understand from that that this, for example, \$133.33 an acre is not necessarily a figure which represents the comparison between that particular item

and some other item along there, but is very likely your increase in value on a re-survey of your first grading?

“A. That is correct.”

Now, that suggests, your Honor, that that keen real estate scent might have been a little off that morning because it does seem remarkable that a man of that keen sense should go upon a piece of land and say it was worth \$100 and then within a few minutes find that it was 33 1-3 percent out of the way.

“Q. It still seems to me that you have to have a base somewhere to start from.

(3596) “MR. SEARLS: I think your Honor desires to know whether there was any definite ratio between the different grades of land.

“THE MASTER: What I am trying to get at is his mental process in reaching these results which are minute to the cents. We have become familiar in prior proceedings with a base; for instance, over there in the Pleasanton country, it is very likely that one could take as a base figure the \$500 land, and figure from that. I can conceive a method of close gradation and figuring which will start from something. I am trying to get at what he starts from. If he is using a percentage, he had to use a percentage of something.

“A. Where a percentage was used, it was a case of figuring that that unit, or the whole parcel, or that district, was worth a third more than appeared when first going upon the land. These values per acre were simply adhered to, your Honor, in order to keep the entire parcel as consistent as possible. They are a little misleading. A man would not say that land is worth \$133.33 an acre, of course, but in getting at the total value, it seemed very much wiser to retain the exact appraisal that was made on the land. In residential land, your Honor, you cannot use any rule. It is what you know it will sell for in the market, and that is, of course, based only on experience. It is not like grain land or fruit land or stock land.

“Q. You have said this morning that even though you placed a price on the graded portions as a unit, you meant by that you did it always bearing in mind that it was a part of a 22,000 acre tract; it seems to me obvious that there is no conceivable relation between the Rudolph piece down there near the West Union and the piece which covers the other end of the land up at Mt. Pedro, that is, no conceivable relation in the way of reflecting value on each other, or physically, or otherwise; (3597) but, what I understand you to mean is that that relation may occur, and in such instances as you gave, the two adjoining pieces, 89 and 92, and I suppose you mean that it further occurs and that that relation further exists in this, that having a large tract to sell, you have a larger wholesale lot than a piece of 400 acres, and you give that effect by depressing your prices.

“A. To a certain extent that is true; more particularly, I think, the amount of tare, of waste land, that is carried in such a tract as this is what has the effect. That, to a certain extent, regulates the time that it could be disposed of in. Net high grade land, your Honor, of residential character, will sell quite quickly.

“Q. Suppose you had 22,000 acres of land that was comparable everywhere to the Sherwood Point, the highest grade land perhaps that you have valued—there may be others, but that is a very high grade piece in your valuation; now, would you rate that whole land at the same price as you would rate Sherwood Point, if it were sold separately and alone? You introduced the element of waste land, of tare, as you call it; now, eliminating the idea of waste land, suppose it all to be the finest grade of land, and instead of having a piece of 50 acres to sell and find a market value for it, you have a piece of 22,000 acres to find a market value for.

“A. There is no doubt but what the piece of 22,000 acres would be less under those conditions, because you would immediately glut the market with the same type of land.

“Q. Then I don’t quite see what the question of waste land has to do with it; it seems to me that your answer would be what I first indicated, that you have used the conception that you are valuing this land as an entire piece of 22,000 acres to depress (3598) the price for the reason that you have just indicated, namely, that you have a large piece, and you are likely to glut the market?

“A. No, that is not the way it operates. The land, in its form at present, the 22,000 acres, has a certain proportion of high-grade land; you could sell that high-grade land off quite quickly at higher prices than I have given, but you would then be in the position of having to carry the waste land for quite a time until it did what we call ‘come in’ until the market developed for it.

“Q. That would be so whether you had the 400 acres in the Claffey piece, we will say, or the entire 22,000 acres, wouldn’t it?

“A. If you sold off the good part, yes, you would have the tare left; that would be a very poor way of going about it.

“Q. Of course, I appreciate that.

“A. In my judgment, your Honor, you would not get the total value out of it if you did that in the ultimate that you would get if you sold it as a whole; so that, to a certain extent, they off-set each other.

“Q. I appreciate that, also. But, as I say, that exists whether you have 22,000 acres or any particular parcel of 100 acres down there, because it is sure to contain some tare.

“A. That is correct, in varying amounts, according to the size.

“MR. McCUTCHEN: Q. Taking this tract to which his Honor calls your attention, and on a portion of which you placed a value of \$133.33 an acre, how did you happen to hit upon those particular figures for that land—I don’t mean the fraction.

“A. I have just been trying to explain that to his Honor, and I explained it the other day. I fancy that that parcel appeared to be worth \$100 when I first went on it; I made that

note at the time when I was on the land. When I went over it further, the impression of the whole parcel and of the district was improved, (3599) it looked better; the more I got into it and over the adjoining lands and saw the various qualities which the entire tract contained, it looked better. I know that was the case there, and I know it was the case in one instance I depressed it, but it was a very small tract. The result was the price that was put upon it. That price was undoubtedly arrived at on a percentage basis, in other words, the tract seemed to be a district a third better than it looked at first. That is very often the case when you first start out in the morning and—

“Q. I am not asking you that, Mr. Smith, you have said that several times.

“A. But it is a distinct part of my explanation, Mr. McCutchen.

“MR. McCUTCHEN: I submit to your Honor that he has stated that several times before.

“THE MASTER: I will allow him to state it again.

“A. (continuing): Very often in the morning, when you start out there may be a dense fog, or it might be raining, or something like that; the human element will certainly enter in, and it is only just to correct it when you consider it is proper to correct it.

“MR. McCUTCHEN: Q. \$133.33 is one-third more than \$100; do you know whether you took \$100 in the first instance as the value of that sub-division?

“A. I think I did. I will see if I can check that. May I ask your Honor what unit that is?

“THE MASTER: It is Parcel 37; it is unit 3; there are several other units there; for instance, there is unit 10 that is right near there.

“Q. Does unit 3 contain 8 acres?

“A. Unit 3 contains 8 acres; unit 10 contains 12 acres. Unit 3 is just south of where the Half Moon Bay road crosses, and

(3600) apparently, from a memorandum I have here, which seems to have been made on the ground, there was quite a little variation in the original idea just in working it out. I find one figure \$125 and that is stricken out and \$100 put down, and then apparently I finally used \$100 and gave it 33 1-3% increase.

“Q. How do you know you gave the 33 1-3 increase? What have you there to indicate it?

“A. I have nothing to indicate it. That was worked out on the ground.

“Q. That was worked out on the ground, and you say that memorandum was made on the ground?

“A. May I refer you to this sheet, also, where the change was made after I got back to the automobile? It is very clearly indicated.

“Q. How is it, if those changes were made on the ground, that original figures were put in in pencil and the correction in ink?

“A. I used a pencil out in the field; sometimes I used a fountain pen. When I got back to the automobile, I had a table in the back, and I nearly always used ink. The pencil blurs so badly. I carried all of those sheets in the field at the same time.

“Q. Haven't you repeatedly said to his Honor during this examination that you could not make valuations away from that land, that you had actually to be on the land and see it at the time you put your valuations down?

“A. Yes, that is perfectly consistent.

“Q. This valuation on unit 3, you say, was made while you were on the ground?

“MR. SEARLS: Where do you suppose his automobile was, Mr. McCutchen—in his garage?

“A. I might state, Mr. McCutchen, that the automobile was standing—this has no bearing whatever on it—but it happened to be standing right there.

“MR. McCUTCHEN: Q. Within how many feet of where you made the figures on the ground? A. I don't know; a few feet.

(3601) “Q. That is to say, being within a few feet of your automobile, you made these figures of \$100 an acre on this land after having as you say, made it \$125, and then you walked over to your automobile and made the \$133.33: Is that the fact?

“A. No, I didn't say that at all.

“Q. Well, what do you say?

“A. I have explained that several times and I will explain it again: I went onto that land and graded it as I went; in some cases I had to go back to be sure, because there would be other ideas that would come up after having apparently settled what the land was worth. The valuing of land is not a thing that you can do in an instant, it is absolutely necessary to take a great many elements into consideration. In this case I am very clear in my recollection it required going back over certain portions of the land. After giving the valuations and taking into consideration the surrounding conditions and the growth, and I think probably more than anything else the advantage of the adjoining lands, it was only fair to raise the appraisal.

“Q. Why do you say you made these last figures, \$133.33, immediately upon walking from the place where you made the \$100 valuation to your automobile?

“A. Well, perhaps that was a little misleading; it was not intentionally so. I did not walk from where I placed the valuation of \$100 to the automobile and write down \$133.33; no, that was not the case.

“Q. Didn't you just say you made that change from pencil to ink as soon as you walked to your automobile? A. Yes, I did.

“MR. SEARLS: I object to this line of examination, I think it is very unfair to the witness.

“THE MASTER: Mr. McCutchen, I don't see any particular point in the cross-examination. He said he did it all on the ground. (3602) He may have done it while he was on a whole

parcel or within a whole section. Nor do I see any particular signification in the change from pencil to ink.

“THE WITNESS: If your Honor will permit me, I will state that I did it while I was still on the parcel.

“MR. McCUTCHEN: Q. Do we understand that while you were on that parcel, and at the time you made this valuation, you put three independent figures, first, \$125, then \$100 and then \$133.33? A. That understanding is absolutely correct.

“Q. Then you did not do that after going upon some other parcel?

“MR. SEARLS: Well, he just stated he did.

“MR. McCUTCHEN: Did he?

“THE MASTER: He just said that he did it all while he was on Parcel 37.

“A. I made the figures while I was on Parcel 37 and I may have in the meantime passed over to other parcels—just to make it perfectly plain.

“MR. McCUTCHEN: Q. You say you may have, Mr. Smith; that is simply speculation.

“A. Yes, that is speculation; a great many answers I give you have to be speculation, because memory is too dangerous to state it as a fact.

“THE MASTER: Q. All you mean is that while you were grading in a particular place you finished up your gradation at that particular place, whether it was a single parcel, or whether it was a collection of parcels in the general neighborhood?

“A. That is absolutely correct, your Honor.

“MR. McCUTCHEN: Q. Turn to your notes with reference to unit 13 of Parcel 37 and let us see what your first valuation of that unit was.

“THE MASTER: That unit contains 17 acres.

“A. The first valuation that is down here is \$100 an acre.

“MR. McCUTCHEN: Q. And what is the second one?

(3603) “A. Let me look this up—

“Q. Just answer my question, what is the second one?

“A. Just let me look it up, Mr. McCutchen. These notes were taken on a contour base and on the basis of government subdivisions; to re-arrange them according to the parcels of the company was quite a considerable piece of work, and it is necessary to take a little time to look these things over. I made these gradation maps at quite a considerable expenditure of time in order to clear that up, but if you wish to go into the original sheets, the time will have to be taken up to go over them. Apparently the first appraisal of that included 15 acres, and then I increased it to 17 acres, evidently taking in part of a point which runs out there. I think the figure was \$146.66 an acre; in other words, I raised that from 15 acres at \$100, \$1500, to 17 acres at \$146.66, \$2,493.22.

“Q. Is there any intermediate figure there?

“A. I see an intermediate figure there; it must have been made before, because it is scratched out.

“Q. What is that figure? A. \$2833.22.

“Q. How much an acre?

“A. I would like to state, Mr. McCutchen, that that might be misleading. In writing down the figures and going back it is very possible that I got the wrong price at a location; I cannot tell for sure. I really think it is a little bit unfair to the record to put in all this sort of stuff, there might be errors.

“THE MASTER: Q. Just answer the question. You started to explain it, and then you departed from it. You said you had 15 acres at \$100, and that then quite likely by the addition of two acres it raised your base to \$146.66. What do your notes show the two acres of the point at?

(3604) “A. No, I don't think your Honor caught the idea. The two acres probably had very little to do with the increase in value, because I noticed that I have increased a number of parcels right in that vicinity.

“Q. You see, what we are trying to get at, Mr. Smith, is the

process by which you arrived at the figure. I have no doubt that you had a process by which you did it. You don't find from your notes how you get that extra figure of \$46.66 over the original \$100.

"A. No, the notes would never show that in all probability, because that would be done right on the ground, and would be done as it appears to me fair to the appraisal. I might have in some instances, but I don't think I would always put down details like that, because I didn't suppose those would be called for.

"Q. There is no particular interest in the particular gradation except to determine the way in which you got at it?

"A. It was by taking all the elements into consideration while I went over the land, your Honor. I don't know how else to explain it. It is knowing what the land would sell for.

"Q. Don't you see I am trying to get at the striking figure of \$146.66. Now, maybe you can't remember it.

"A. No, I do not remember it in that instance.

"Q. Then, that is the thing to say; it is easy to conceive that one cannot remember everything.

"MR. McCUTCHEN: Q. What is the second figure on that note per acre? A. The only figure I know as the second figure is the one I have given. There is another figure on the sheet here.

"Q. Why don't you state it? A. Because I don't know that it is correct.

"Q. What is the other figure. A. \$2833.22, and there is also \$166.66 both of which are stricken out.

(3605) "Q. Is the \$166.66 in your writing?

"A. Yes, it is in my writing.

"Q. What is that intended to represent?

"A. It is in the column here which represents rate per acre.

"Q. You say it is in that column. Have you any doubt about what it means?

"A. I have no doubt about what it would mean if it were

applicable to this case. I don't recall deducting the value of any of that land in there. My recollection is that it was increased.

"Q. Then you don't know what that figure means?

"A. No, I don't know what significance it has.

"Q. You understand that question, do you? A. Yes.

"Q. Do you know what that figure in your notes means?

"A. No, I don't know what it means.

"Q. And you cannot afford any explanation of it?

"A. Yes, I think it was a mistake. I think I put figures down there, as was perhaps often the case, where you have a great mass of sheets, I might have taken out sheet marked 800, which happens to be this one, instead of 809 and taken the unit and not paid much attention to it. Those things are all possible when you are on the ground.

"Q. Was this figure, \$166.66 written down there before or after the figure \$146.66? A. I should say it was before.

"Q. Then it must have been written when you went back to the automobile? A. Inasmuch as it is in ink, I would be fairly well satisfied that it was in the machine.

"Q. How do you say the mistake might have arisen?

"A. It might have arisen by taking out the wrong sheet. That is one possibility. We had a sheet of paper on which the notes covering one parcel according to our numbers was, usually a section, a quarter section, or something of that sort, and it is possible that (3606) sheet 800 was taken out instead of some other sheet, such as 805, 806, or 809, or something like that, which also had a unit 5 on it, and in making the note possibly intended for 809 or some other number I would have simply looked at the parcel number and made the change and then discovered I had the wrong sheet and take it out. It is not at all logical to suppose it applies to that immediate piece."

What the witness had done, beyond any shadow of doubt, was to put a value of \$166.66 upon that particular unit; there cannot be any doubt about it. He could talk from now until doomsday

and he could not satisfy any reasonable man that he meant anything else. But he did not have the intellectual honesty to admit it.

“Q. You have spoken several times of the possibility of taking a sheet out; taking it out of what? A. A portfolio.

“Q. You had this sheet in your hand and before you the particular parcel, and you were putting the valuations down on it; did you have any other sheet in your hand at that time?

“A. I should say I did.

“Q. While you were dealing with this particular parcel?

“A. Yes, indeed. Very often the question would come up. Well, now this land is certainly more salable than that piece—we will say 49; then I would look up the sheet that contained that portion of 49 just to check the idea that I had of the value. I had a great many sheets out at the same time, sometimes.

“Q. You have said that after putting these figures, the first figures, upon this particular parcel, or subdivision of Parcel 37, you may have, before putting the figures down, \$146.66, taken a wrong paper out of the folder, and that is your explanation, as I understand you, for putting the figure \$166.66 on this particular unit?

“A. I say that might be the explanation; that is a possibility.

“THE MASTER: Let us not speculate too much about anything you do not remember, because we will get into deep water. It might be that the figure was what you originally had there, \$166.66, and then you decided that it was worth \$20 less than that?

(3607) “A. It might be that; I don’t think that is the case, but it might be.

“THE MASTER: That would strike me as being the most reasonable explanation of it, although I wondered how you made the \$166.66.

“THE WITNESS: That is the very reason, your Honor, why I don’t think it had anything to do with this particular case.”

I confess I don't know what that reason is that is so satisfactory to the witness.

"MR. McCUTCHEN: Q. Well, let us assume, then, for a moment, that it did not. What——"

Then Mr. Searls again objected to any further examination along that line and your Honor suggested that he did not want it prolonged too much.

"Q. Why did you add 46.6% to that unit after having first fixed the value at \$100?"

"A. I could not answer that right here. It was undoubtedly some influence that affected me on the land.

"Q. That would be a very peculiar influence, would it not, that would induce a man to add 46.6% to a previously ascertained figure?"

"A. It would if he simply went on that one parcel, and did not go on any of the rest of the land.

"Q. Let us look at unit 15 of Parcel 37.

"MR. SEARLS: In connection with that last answer, I think the witness testified that sometimes he reduced it dollars instead of percentage.

"MR. McCUTCHEN: Q. Look at unit 15 of Parcel 37.

"A. That is a part of a 45-acre tract, and that part of the 45-acre tract contained about 10 acres; I valued it, after (3608) making various changes, the final valuation was \$2333.30.

"Q. What was the first one? A. I didn't have that segregated at first, that 10-acre piece.

MR. SEARLS: Mr. McCutchen, you will note that that is the boundary line of the whole parcel, and was probably included with the adjoining parcel.

"THE WITNESS: That is the case, yes; that is the reason why it was segregated the first of this year, instead of at the time I was on the land in the first place.

"MR. McCUTCHEN: Q. You have apparently on your notes

here a parcel of 32 acres in that 45-acre tract. What number is that given in these units?

“A. It is in 37.

“Q. Is this the sheet of 37 that you have before you?

“A. No, not altogether.

“Q. I am asking you for that, Mr. Smith.

“A. I cannot give you that, except as we placed it in the book of gradations, the maps. As I stated before, these gradations which I made on the land when I first appraised that land were made according to government subdivisions, usually, and this happens to be one of those cases.

(3609) “Q. You have a 3-acre piece, have you not at \$267.50. In which parcel is that? A. I think we will find that in Parcel 54; yes, that would be one of the units which went to make up 54.

“Q. Let us see your notes on that? A. Part of them are here and I presume part of them are cut into other sections.

“Q. That is 54; haven't you the figure 175 stricken out and 267.50 inserted in its place?

“A. There is, it is true, a figure 175 and also a figure 150, but that had nothing to do with the final gradation into these parcels, and when that was made it practically, as I have stated, required a reappraisal of the lands along the lines and consequently other lands are affected.

“Q. Is this a fair statment, that you first appraised that 3-acre tract at \$150, you then appraised it at \$175, and later on appraised it at \$267.50? A. It is not, for this reason: I appraised the Sherwood Point, we will say at \$550—

“Q. I am asking about this tract.

“A. (continuing) and I appraised the entire tract, we will say the east, or in that district, at \$200; one is an average and the other is a special appraised value; that 3-acre piece that you speak of at different values, it shows was a small part of the larger 45-acre unit which was first appraised.

“Q. See if you can give us that. When was that first appraised?

“A. The first figure that was written down here appears to be 150; that is stricken out, but the final figure at which the 45 was appraised at I do not seem to have written down here.

(3610) “Q. Were all these figures made while you were upon the land at that time?

“A. The little segregation of 45 into 32, 10 and 3 was made this spring, it had to be.

“Q. But the other figures were made while you were on the land?

“A. Yes, they were, the first time.

“Q. Can you tell us how, having valued that at first at 150 and later at 175 you finally came to the figure of \$267.50?

“MR. SEARLS: I do not think he said that, Mr. McCutchen.

“MR. McCUTCHEN: Q. Did you say that, Mr. Smith?

“A. No, I did not say that. I could not say that because it is not the case; there are only 3 acres at \$267.50; the 3 acres was included in a 45-acre piece which had an average price; I do not think that \$175 was the final price; I am quite sure it was not; it could not have been, because I do not think that they would work out. I have not worked it out to see, but the final figure must have been in the neighborhood of \$200 or \$225—that is about.

“Q. Why do you say it would not work out? A. What do I mean?

“Q. What do you mean? A. I mean arithmetically it would not. As I just glanced at the figure, Mr. McCutchen, that hasn't anything to do with the value I placed on it because there was a little note, notes made in a pocket memorandum-book which were lost and these were simply saved just by chance.

“Q. Now take unit 11, 32 acres, of this Parcel 3?

“A. It is a little difficult to give much data on that here but I will tell you what I have.

“Q. Where is it in your notes? A. Unit 11 shows as a por-

tion of unit 4 of our subdivision 800, and that subdivision was 42 acres and the price which is down here for the entire subdivision seems to be the final price; that seems to be \$85 an acre, \$3,570; unit 11 on the map shows \$3,570.

(3611) "Q. What does it show the price to be? A. \$111 and odd cents.

"Q. Where is the memorandum in your notes that places \$111 and odd cents on that? A. There is none.

"Q. By the way, you have stated several times, haven't you, that you very rarely made reductions from your first figures?

"A. That is the case.

"Q. Let us see your notes of your first figures and your final figures? A. Any particular parcel?

"Q. That you had just now; let us see the page that you had just now; that isn't the page is it, that you were referring to?

"A. Certainly.

"Q. Isn't there here a reduction from \$93 to \$85?

"A. I cannot say that there is; that is exactly the same as the other one that we were discussing a little while ago, that 166. There are two or three on the same page, and it is more than likely that just such an occasion arose as I detailed.

"Q. That is to say you got the wrong sheet; is that what you mean?

"A. That is a possibility.

"Q. Here is a figure of \$85 in pencil, \$133.30 in ink, stricken out and above that \$112.97. Does that show a reduction or is that also probably due to that?

"A. That does not necessarily show a reduction, Mr. McCutchen.

"Q. The only explanation you have of that is that you probably got the wrong sheet; is that it?

"A. It is one; it may be a deduction but my recollection is that none of that land along there was reduced. The only land that was reduced was opposite, I think I am correct in saying it,

Parcel 90 on the east slope of the Sawyer ridge. I gave it a snap judgment value from across the lake, and when I got on to the land I reduced the value.

“Q. Now, these three changes that I have called your attention (3612) to on this sheet do not refer to that parcel at all, do they, the one you have just spoken of?

“A. No.

“Q. Turn to another sheet where you have pencil figures and then figures in ink. Before we do that, do I understand that when you went back to your automobile you made these changes from pencil to ink for fear that the pencil would be erased?

“A. No, you do not understand that; that was one of the elements of course. Sometimes ink figures were made in the field.

“Q. Well, now, on another page that you show me, I find the figures 125 in pencil and above that 166.66 in ink; that indicates, does it, that you first valued that parcel at \$125 and then increased it to \$166.66?

“A. That would indicate that, yes, I think that is correct.

“Q. I find another case of figures in pencil 150 and above it in ink \$200. That would mean that you increased it from 150 to \$200? A. Yes, that is correct.

“Q. I find again figures 100 in pencil and 133.33 in ink; that indicates that you changed it from 100 to \$133.33, does it?

“A. I would say that it did—yes, of course it does.

“Q. Now I find the figure here of 65 in pencil, stricken out, \$86.66 in ink stricken out, and \$70 above that in ink. Does that indicate that you had three figures on that parcel?

“A. Not necessarily. It may be that the 70 or the 86—no I do not think that is correct. It is possible that the 70 was put in when a portion of that was regraded, but I cannot tell you offhand. I can look it up and see whether I think that from the notes; but it is in the same class as the others; it would not make any difference.

"Q. Now, Mr. Smith, what did you make this up from, this 'Exhibit 49'—is that 'Exhibit 49,' your Honor?

"THE MASTER: That is 'Exhibit 49.' It was offered by Mr. Steinhart (3613) the other day and I suggested that he retire it and bind it and offer it again, but it might as well be offered.

"MR. McCUTCHEN: Q. What did you make this 'Exhibit 49' up from? A. From the notes and the contour map and from the lands.

"Q. And you made this up from the land? A. You mean that particular one?

"Q. Yes. A. No, that was made in the office from the notes and contour maps.

"Q. Have you got those notes and the contour map here?

"A. Yes.

"Q. Now, your notes show, as I understand you, that you have no subdivision similar to unit 7 of 22 acres; is that a fact?

"A. No, that could not be a fact.

"Q. In your notes I mean? A. I will look it up; I did not use the same unit numbers on these maps as it would have been extremely confusing; these are arranged numerically for the convenience of the court; that unit 7 on page 3 of the exhibit is the same land with a little additional land which is shown as unit 7 on my sheet 800.

"Q. Unit 7 on your sheet 800 is first put down at \$85, which is stricken out and the figure in ink of \$133.33, which is stricken out, and above that \$112.97. What did you add to that or take from it to get the figure of \$200? A. I may have made a mistake in this, but I do not think I have. Let me see.

"THE MASTER: Think it over before you give your answer, Mr. Smith.

"A. I do not think I could answer you that, Mr. McCutchen. I have no data here that shows.

"MR. McCUTCHEN: Q. Now, as I understand you, you know these values which you have placed upon the individual parcels

which appear upon the Spring Valley map are correct because (3614) they are the aggregate of the unit values of those particular parcels as determined by you. Do you understand that question? If you do not I will ask the reporter to read it to you.

"A. Will you read it? (Last question repeated by the reporter.) Yes.

"Q. But you cannot tell us how you got at those unit values?

"A. There may be one or two isolated instances, it is possible, where I cannot tell you, because it is possible that the change was made right on the ground.

"Q. Will you turn back to this page that you were looking at a minute ago, of your notes?

"THE MASTER: Mr. Searls, I have marked this set of sheets as 'Defendants' Exhibit 49,' * * *

"MR. McCUTCHEN: Q. On this sheet which you refer to when you were answering the last question, I find opposite Parcel 3 the figures 85 in pencil stricken out, and above it the figures \$133.33 in ink; can you tell us in the first place how you got \$85?

"A. That was my idea of what the land was worth.

"Q. While you were upon the ground?

"A. When I first went right on to the ground.

"Q. When were these figures \$133 made, at the same time while you were on the ground? A. Those were in all probability, I think I am safe in saying they were made as soon as I had been over all that particular area.

"Q. All that particular parcel? (3615) A. By parcel do you mean the parcel that I was looking at?

"Q. Yes, I mean that Parcel 37?

"A. No, I did not have Parcel 37 at that time. I had to use a different system than the Spring Valley parcels, but after I had been over the area I very often made changes.

"Q. Now then I find opposite unit 6 the figures 125 in pencil and above that \$200. It was your notion first, was it, that that unit was worth \$125?

“A. Just a moment until I read that; I think I recall something about that particular piece; yes, I wrote that \$125 down, and there were a couple of other instances of the same character, before I went into the gulches, which as I recall it bordered that little unit on either side; it seemed from a preliminary survey from the road and from the flat or sort of a knoll that there is on that piece that that was the right value for it; then I went into the gulches and it certainly showed up very much better.

“Q. That was a case then where the gulches added 60 per cent to your first notion of value, was it?

“A. It certainly added the difference.

“Q. It did add sixty per cent. according to your figures, didn't it?

“A. That in connection with a somewhat similar experience all along the lake there, Mr. McCutchen.

“Q. Are these deep gulches? A. Not very deep, but they are very gulchy, they are narrow, but quite picturesque, and the views are exceedingly fine.

“Q. Is it your opinion now that the presence of these gulches makes the property worth 60 per cent. more than it would be if the gulches were not there? A. No, I would not say that at all; there are many gulches which detract from property.

“Q. I am speaking of these particular gulches; does the presence of these gulches make that unit worth 60 per cent. more than (3616) it would be if the gulches were not there?

“A. It might be the case that it would be worth less if the gulches were not there, but I could not say, because a great deal depends on the view, and the view might be just as fine if the gulches were not there and the trees were arranged in a different way from what they are.

“Q. At any rate you add that 60 per cent. solely and only because you went into the gulches and found they were more beautiful than you first assumed them to be?

“A. I do not think that was what I said exactly; I said that

it had considerable to do with it, and that also it was the fact going over the contiguous parcel of land, even so far up the shore of the lake as what is known as Parcel 36.

“Q. Now, Mr. Smith, I have not asked you about that. We are taking a lot of time as it is.

“A. But I want to try and explain how it was that the values were changed and legitimately changed.

“Q. Now, then, drop down to unit 7; you first valued that at \$85, didn't you? A. Apparently.

“Q. And you struck that out and above that appears in ink the figure \$133.33. Do you think that was because you got the wrong slip or wrong page?

“A. It may be that that occurred several times, or it may be that there was a part of it that was——

“Q. Then we find the final figures on that unit as \$112.97; what induced you to go from \$85 to \$112.97? A. The same things which have effected any changes that I made through the entire appraisal.

“Q. That is very general, but what was it in this particular case that induced you to go from \$85 to \$112.97?

“A. I don't recall anything offhand. I will see if the map or any of these notes have anything. Undoubtedly, Mr. McCutchen (3617), it was something of the same nature which caused the increase in price of that other unit to \$200, because I see it is in the same district.

“Q. Well, now, is it worth \$85, or is it worth \$133.33?

“A. It is worth whatever I gave it; my recollection is that I gave it even more than \$133.33.

“Q. You did give it more than that—\$112.97, you mean?

“A. \$112.97. I think ultimately that I decided that that piece would tie so well to the surrounding piece, giving a sort of plateau at the back that I perhaps raised that a little proportionately; that is my recollection.

“Q. You are inclined to think that you were too liberal in

that case, are you? A. Not too liberal considering the instructions that I had, but I think that I was as liberal as I should have been.

“Q. Well now, we have unit 4 of that parcel and opposite that the price \$85 in pencil; above that \$93.30 in ink, stricken out, and above that again \$85. Now, were you in a good deal of doubt about that parcel?

“A. Not after I had finally been over all of them, I can assure you of that, but apparently I was a little in doubt when I first went on it, from these figures; there is very good reason for being in doubt, Mr. McCutchen, on that unit, as it lies right along the shore of the lake and is upon first inspection rather barren and poor looking, but when you consider it in conjunction with the rest of the land it has a better appearance.”

Now, I submit, your Honor, that these figures could not have been made in the way that the witness suggests they were made. They were made to produce a result, and there is no other possible explanation for them. A total figure had been arrived at in some way, and these figures were made to meet that total figure. Now, when a witness talks about land being worth \$93.30 an acre, which he first puts down at \$85, and when he indulges in all of these other figures that are irreconcilable, it is impossible for us to believe that he was controlled by any sort of rule of percentage. At any rate, if he was, I will be glad to have counsel on the other side tell us what the rule was.

MR. SEARLS: You mean by that you think he made a figure for the whole parcel, and then put these subdivisions into it afterwards?

MR. McCUTCHEN: I don't know whether for the whole parcel or the whole property. If I might speculate upon it, I think Mr. Smith desired to give the impression that he had gone about this very much more thoroughly than anybody else; that it was necessary to make valuations of parcels, and in order to arrive at a value of a particular parcel, it was necessary to subdivide it

into units; and in order to show that he had gone about it in that intelligent way, it was necessary for him to show that he had arrived at units which, added together, would produce a total, and I think those figures were put down with little, if any, regard for the character of the land or the value of the land; I mean the figures in these units.

An additional portion of the testimony of Smith to which I wish to call attention is his attempt to cover water value, so to speak; his effort to close a gap, I think I may call it without injustice. He knew nothing about water value. He knew nothing about the value of land for its water production. He knew nothing about the value of land because of its availability for reservoir purposes, but he was quite willing to go to extremes in order to cut the plaintiff off from any value on account of the water gathered upon its Peninsula properties, and on account of the availability of its properties for reservoir purposes.

Reading from page 3731 of the transcript, he said:

“You have a certain number of parcels according to our units which overlook the lake, and I found that the average value given for those parcels was \$240.55 per acre. Then I took a number of parcels which were as nearly the same which were analogous lands to those which overlook the lake but which did not overlook or border the lake and I found that the average value which I had given to those lands was \$119.10. It was therefore apparent that I had added for the presence of the lakes 201.97 per cent.

“Q. Now will you give us those two lists of lands?

“A. I will be very glad to give them to you, but so far as the exhibits are concerned, it would mean nothing because the (3732) parcels refer to the contour map which I used in the field.”

* * * * *

“Then I figured as closely as I could the amount of land which was affected by the presence of the lakes; by affected I mean in the matter primarily of view; and the minimum amount which I

figured was affected by the lakes was 6333.79 acres. Then I added up the figures at which I had appraised these affected lands, and the average was \$125.77 per acre, a total of \$796,594.20. Then by the use of the percentage which was arrived at above, \$201.97, the 6333.79 acres would have had a value if the lakes had not been present there of \$394,412.14. Then I figured as nearly as I could the amount of land which was submerged, and the total was 2009.39 acres. The value of that land in my judgment has been absorbed by the land affected by the presence of the lakes, as the value which has been added to this land is the difference between the appraised value and the \$394,000 and something which it would have had had the lakes not been there; I figure that I had added \$402,182.06, or \$200.15 per acre. Then I tried to arrive as nearly as I could at what the value of the submerged lands would have been had the lakes not been there. Of course I got immediately into the speculative (3733) but I checked my own idea by talking with Professor Haywards' father and other people who had been in the country before the lakes were there just so that I as nearly as I could arrived at the general character of the different portions of the land, and using lands which were similar or presumably similar to these submerged portions as a base I found that the value which I would have given to those lands submerged was \$133.32 an acre. Therefore if the lakes were not there we may assume that the 2009.39 acres would be worth \$267,891.87. Adding to that the increased value which the overlooking and adjoining lands had according to these figures, namely, \$394,412.14, you find that had the lakes not been there and on this hypothesis that I have just outlined your value would have been \$662,304.01, where the actual value of the lands surrounding and overlooking the lakes was \$796,594.20, which leaves an excess of \$134,290.19."

* * * * *

(3734) "Q. Now, point to us one of your valuations that was affected by the considerations you have just discussed?

"A. Well, off-hand, without referring to these, I can point to the lands surrounding the stone dam.

"Q. Take the lands immediately around the stone dam; what was the value of this land? A. As I recall it \$600 an acre.

"Q. Now how much would they have been worth if the dam had not been there?

"A. To compare those lands with lands not overlooking the lake, I took the lands—

"Q. (Intg.) Now then leave that out of consideration.

"A. I am arriving at the answer to your question. I can give it to you exactly, if you like, \$225 an acre.

"Q. They would have been worth— that is, the lands which you appraised for \$600, would have been worth \$225 if the lake had not been there?

(3735) "A. Yes, the way I arrived at that was, taking the lands just north of the lake which presumably are quite similar lands."

* * * * *

(3736) "Q. Let us take your Parcel 90 again. You gave Parcel 10 a value of \$750, and Parcel 4 you gave a value of \$337.50. Did Parcel 4 have a good view of the lake?

"A. Some parts of Parcel 4, yes.

"Q. Was the difference between Parcel 4 and Parcel 10 due entirely to the fact that one had a better view of the lake than the other? A. Not entirely, but it was due in part to that.

"Q. To what extent was it due to the better view from 10?

"A. It was due in part—I cannot give you any percentage, but it was also due in part to the fact that unit 10 is a strip for the most part lying between the road and the lake shore; in other words it is a narrow strip of what you might net high-grade land, whereas unit 4 runs back across the flume and to the plateau at the back.

“Q. I would like you to take any two units in any one of your subdivisions and compare the one with the other and tell us how much you put upon each on account of the presence of the lakes?”

* * * * *

(3737) “Q. (continuing) I want to see to what extent the presence of the lake influences the values that you put upon these properties having a lake view.

“A. It may be that I can; I think, Mr. McCutchen, the best individual units to use are the ones we have already mentioned, the ones around the stone dam; there they are separate and distinct.”

* * * * *

“Q. Did you place a valuation upon any one of these parcels by reason of the fact that it had a view of the lake?

(3738) “A. Undoubtedly unit 10 there would never have been appraised at \$750 an acre had the lake not been there.

“Q. How much would it have been appraised at if the lake had not been there?

“A. That I cannot tell; I can only approximate it.

“Q. Therefore you cannot tell us how much you added for the lake view; is that true? A. If I were to take unit 10—

“Q. Answer the question: Therefore you cannot tell us how much you added for the lake view?

“A. I cannot tell you exactly but I can tell you, as I have, approximately.

“Q. Well, tell us approximately how much you added because of the lake view, to unit 10?

“A. I think that that individual unit, I must have added over \$500 an acre to.

“Q. That is to say, if the lake had not been there unit 10 would have been worth only \$250 an acre.

“A. I think that is approximately correct; of course it is an approximate appraisal that I am giving now, and I do not

want to be confined to the prices that I give; I am simply giving approximations as I recall the elements."

* * * * *

(3739) "Q. Give us an example of the property which you say was influenced by the presence of the lakes and any other property similar to it in other respects, but which did not have the lake view?

"A. Probably the simplest way is to refer to the book of photographs; I think if I am not mistaken that there (3740) is a very good concrete illustration in Parcel 39 along the west arm of the lake, my recollection is that it is on pages 19 and 20 of the book of photographs.

"Q. Now, I am quite willing you should refer to that, Mr. Smith, but I want to suggest to you in that connection that you have repeatedly said, have you not, that these values placed upon the units do not mean unit values, but the aggregate means the value of the whole property?

"A. I think that is correct, as I understand your question.

"Q. Now, go ahead with your reference.

"A. But the unit parcels you must keep in mind, are valued as a part of the whole; they would not be, we may say, as a general rule, worth the same figures as I would give them or have given them had they been isolated parcels; they would have been worth more or they would have been worth less, as I have endeavored to point out several times.

"Q. All right; now you get us an example of a piece of property that has a lake view and a piece that has not a lake view?

"A. On the west slope of the Sawyer ridge on photograph 19, that is the extreme right of the first panel * * * * * the land in there ranges in price from \$80 to \$125 an acre in these smaller parcels. The photograph shown on page 20 of the same exhibit shows the west slope of Sawyer ridge, in the

left-hand panel, where the lake influence is absent, and values ranging from \$40 up were placed on that.

“Q. The other case was from \$80 to \$125? A. Yes.

“Q. Did you make that difference solely on account of the fact that the one property has a view of the lake and the other did not?

“A. Very largely so; I don’t know as I can say solely so.”

That, I say, is manifestly inaccurate. This witness went upon these parcels that did not have a lake view and he divided them into units, and when he told us generally his method of valuing property he said nothing about the fact that he was influenced to put these particular values upon these particular properties because they did not have a lake view.

MR. SEARLS: He did say many times in describing these parcels with a lake view, that they did have a lake view.

MR. McCUTCHEN: Yes, you are quite right about that.

(3741) “Q. Now have you a subdivision or segregation of that parcel? * * * * * Look at your notes and give us the values, the individual values on the westerly side of that tract and on the easterly side of it?

“A. If I understand you correctly, you mean of all the land that we were looking at in these two pictures?

“Q. Yes; tell us how much you valued the land that had a westerly slope and how much you valued that that had an easterly slope?

“A. It is very difficult, Mr. McCutchen. On the east slope of Cahill ridge there is one strip of 20 acres along the lake at \$200 an acre; adjoining that on the north there was a piece of 38 acres at \$125 an acre.

“Q. Is the \$125 piece just as good as the two hundred?

“A. No, or I would have given it \$200.

“Q. There were two pieces on the lake; one of them you valued at \$125 and the other at \$200. How much did you add to each of those for the lake view?

"A. I cannot tell you offhand.

"Q. Can you give us any guide that will enable the Master to tell how much you added?

"A. It would be a safe average in all of this land affected by the lake to use the figure I gave, 201%.

"Q. In here we have 80 acres at \$85; is that also on the lake?

"A. A portion of that is on the lake.

"Q. Well, now would the same rule apply there; did it all have a lake view? A. Yes, it all had a lake view.

"Q. And the 201% would apply there also, would it?

"A. 201 as an average, only as an average.

(3742) "Q. If it had not been on the lake it would have been worth \$42.50, would it?

"A. I could not say about that individual parcel, but taking the averages, it is a fair assumption.

"Q. Over on the other side we have that same tract that has no lake view, haven't we?

"A. Directly opposite the last parcel you spoke of and north of it, also in part having a view of the lake, but for the most part being cut off by a curve in the San Mateo Creek canyon, 40 acres, and I valued that at \$40 an acre.

"Q. That had a view. These pieces that you valued at \$75, 33 at \$75; 50 at \$75 and 7 at \$75, they did not have any lake view, did they?

"A. I stated that that piece at \$40 for the most part had no lake view; it was simply the lower corner that had a lake view, and the view was very poor, in my judgment.

"Q. The other parcels on the opposite side of that ridge did not have any lake view at all, did they?

"A. Just a moment, Mr. McCutchen. I am trying to check it against the map. The first one of 7 acres had a lake view but a very poor lake view. It was in my judgment of so low a

grade that it was fair in working out this attempted comparison to use that piece because the land was very similar.

“Q. Did you or did you not add anything to that for lake view?

“A. I undoubtedly added something, but very little.

“Q. How much in that case?

“A. I cannot tell you; it would be negligible.

“Q. Take the next case: you have 33 acres at \$75; did that have a lake view?

“A. That has a minor lake view from some points, I think.

“Q. What I asked you for, Mr. Smith, was to give us some land that had a lake view and some land that did not have a lake view. A. I gave you that.

(3743) “Q. Which land does not have a lake view in these parcels?

“A. Unit 5 of my parcel 1646.”

* * * * *

“THE MASTER: I do not see how you can find pieces of similar type on two sides of the ridge, so as to make your result correct.

“A. Your Honor, I did not do that.”

* * * * *

(3744) “MR. McCUTCHEN: Q. To digress a moment: You spoke of a little piece of land in 52 that was a beautiful little nook on which you placed a value very much higher than the remainder of the land. Do you remember that?

“A. There was quite a number of such instances.”

* * * * *

“Q. See what that \$400 an acre piece is there of 18 acres?

“A. That appears to be unit 49 of this map.

“Q. That hasn't any view of the lake, has it?

“A. No; that lies about a little less than half a mile down the Pilarcitos Canyon from the Pilarcitos dam.

“Q. You have put \$400 an acre on that, haven't you?

“A. Yes. * * * * *

“Q. Now, there is a lot of land that is on the westerly slope of Buri Buri ridge that has an unobstructed view of the lake, and that is quite available for building purposes, upon which you have not put a valuation of \$400, isn't there? A. Yes.

* * * * *

(3745) “Q. Where is this 68 at 225?

“A. That is the piece to which his Honor referred lying just north of the stone dam.

“Q. That hasn't a lake view, has it?

“A. No, it has no lake view; the land which had the lake view and which was of the same type I gave \$600 an acre to.

“Q. Now, what would the whole of 73 be worth per acre if it had no lake view? A. I would not say.

“Q. Did you add anything to its value because of the lake view? A. Parcel 73?

“Q. Yes. A. Unquestionably I did.

“Q. Did you add 100% there?

“A. I will not commit myself on any individual parcels as to exactly what I added. * * * *

(3746) “Q. I understood you to say that one-half of the value which you placed upon the properties immediately around the Crystal Springs concrete dam was due to the fact that those properties had a lake view, and that had it not been for the view, your prices upon those would have been about one-half what they were: Is that correct?

“A. No, sir, it is not correct; I said that the percentage which I worked out as outlined this morning came to about 201; but as to any individual piece, it might be more or it might be less.

“Q. How are we to tell, then, how much you have added to an individual piece because of the fact that it has a lake view?

“A. I don’t think that I could analyze that for you and tell you.

“Q. You don’t think you could throw any light on that, at all?

“A. No, I don’t. I will tell you why I don’t, Mr. McCutchen. I have tried to do it since your questions this morning, and I find that in getting myself onto the land and in the location from which we will say a view could be had, I find that when I get into my mind what that land is worth and try to find out then by concentrating my mind on the process how much of it is due to lake view, I lose the whole thing; in other words, my mind then becomes concentrated on the process, and not on the land, and I lose track of the elements that enter into the making of value on the land.”

* * * * *

(3748) “Q. Then you would say that your appreciation of the value of these properties because they had a lake view was very much like the stockman’s appreciation of expression: Is that it?

“A. No, I didn’t say that at all. I used the illustration and tried to convey to you what I have found as impossible, namely, to define the process of reasoning. I doubt very much whether it can be defined.

“Q. Let us see if we can get at it in another way: You have said that these lands that are near Crystal Springs dam and that overlook the lake, or have a lake view, have a certain value, a fixed value, haven’t you? A. Yes.

“Q. Will you tell the court how you got at that value?

“A. By going on the land and grading it.

“Q. Let us see if we cannot get at it in that way: What was your basis for grading it, what did you start with?

“A. My basis for grading it is wholly a composite of my experience in lands which would be sold or purchased for similar purposes.

“Q. Let us take that as a starting point: What land, in

your experience, was sold for similar purposes which is (3749) comparable to one of those pieces of land next to Crystal Springs concrete dam?

“MR. SEARLS: Mr. McCutchen, the witness testified it was the composite of his experience, not his experience in any particular sale.

“MR. McCUTCHEN: Q. Then, taking all of the pieces that make that fixed picture or foundation, or whatever you may call it, tell us where they came from.”

I thought that we were going to get his basis after a while.

“A. That is impossible, it cannot be done.

“Q. Then do we understand, Mr. Smith, that you expect these valuations to be taken without any possibility on your part of telling how they were arrived at?

“A. I have explained as fully as I can how they were arrived at, and I have also explained, not only as I have progressed, but as I finished how I check them up, and I think in view of this explanation that there is no question but what they must be taken.”

* * * * *

(3751) “Q. If we adopted the rule, or, rather, the assumption that you added 50% to what would otherwise be the value of the lands that had a lake view, the little piece of land over around Pilarcitos to which I called your attention this morning would have a higher value than any other piece of land in the tract, would it not? A. No.

(3752) “Q. It would not? A. No.

“Q. What piece of land have you valued at \$400 an acre which has no lake view?

“A. I cannot answer that, there are so many parcels of land; I have valued land with a lake view at \$600 an acre.

“Q. Exactly, and you say that the lake view means 204 or 205 per cent of the value of the land without a lake view, don't you? A. Yes.

“Q. So that you have not any piece of land——

“A. (Intg.) I think I made a mistake there, Mr. McCutchen, probably I should have said that that is the case, because that would have made it a little over \$800, and there is nothing that I can recall like that; I think \$750 is the highest value of any individual unit. * * * * *

“Q. So you say if these properties had no lake view, this little piece of land over at Pilarcitos would be the most valuable unit, so to speak, in the entire 22,000 acres?

“A. No, I don't say that at all; I don't say that at all because I cannot tell. * * * * *

Now, I submit to your Honor that the process by which this witness attempted to arrive at the conclusion that he had placed a valuation of \$300,000 or \$400,000, or whatever the figure is, upon these lands because they had a lake view is absolutely impossible of determination from his own testimony. The object of it was perfectly apparent. As I said in starting, it was to cut the plaintiff off from the possibility of recovering any value whatever for its reservoir lands.

I might have taken up the individual parcels of these Peninsula properties and given to your Honor the values placed upon them by our witnesses and by Smith and have suggested reasons why our views should be taken rather than those of the defendants, but it does not appear to me that I could have thrown any light on the subject by such a discussion. You have the views of all these witnesses, and it has seemed to me that the only substantial aid I could render, if any, was in an effort to assist you in reaching a proper estimate of the men whose views you were asked to accept.

I have purposely refrained from a discussion of our own witnesses on the theory that counsel on the other side will point out to you whatever weakness may exist so far as those witnesses are concerned. I have not approached the discussion of Smith in any spirit of unfairness, although I would not be candid if

I did not say that the impression made by Smith upon me was that he had no desire or intention to treat with fairness or candor the property he was valuing or the tribunal before which he was testifying.

He valued the property in South San Francisco at \$342 an acre. His testimony on that subject is exceedingly amusing, and I do not think anything in the case more satisfactorily demonstrates an entire absence of a sense of proportion. At page 3525, after he said that property was worth \$342 an acre, he was asked how he arrived at it and said he used his general information, which was rather limited, of any sales in that neighborhood other than South San Francisco Land and Improvement Company.

Then he was asked:

“Q. Tell us what that information was?

“A. It was of the most general character.

“Q. Now, Mr. Smith, did you use that information?

“A. I could hardly have used that information very extensively in giving this price.

“Q. Did you use it?

“A. I assume that I did not use it very much; it was in my mind, of course, just as the high prices which the South City people told us they were getting also was in my mind, even more so.

“Q. Why did you exclude the sales which the South San Francisco Improvement Company had made? A. I did not.

“Q. Didn't you just say you had excluded those sales?

“A. I did not intend to be understood as saying that.

“Q. Well, did you use those sales?

“A. They were undoubtedly in my mind, yes.

“Q. Tell us the information you had which enabled you to arrive at a value of \$342 an acre for this land?

“A. I had one very particular piece of information that I think had a bearing on it, and that was the Prest-O-Lite sale; that information was extremely varying; it varied from the general

street knowledge which could be picked up—and is always more or less worthless (3526) excepting where you can check it, from \$1,000 an acre up to \$2,000 an acre, and down to \$500 an acre, from a source that has always been found rather accurate.”

Now, it may be proper to say, parenthetically, that the sale price of the Prest-O-Lite property was \$2,000 an acre.

“Q. What was that source?

“A. That was Mr. Cunningham, I think the name is, the postmaster of South City.

“Q. Did he tell you the price was \$500 an acre? A. Yes.

“Q. Did he claim to know anything about it?

“A. Yes. He subsequently denied that he told me anything about it, though—I should add.

“Q. And you used that information that you got from him?

“A. No, I got that information after I appraised the property.”

Let us go back a minute: It is worth while.

“A. I had one very particular piece of information that I think had a bearing on it, and that was the Prest-O-Lite sale; that information was extremely varying; it varied from the general street knowledge which could be picked up—and is always more or less worthless excepting where you can check it, from \$1,000 an acre up to \$2,000 an acre, and down to \$500 an acre, from a source that has always been found rather accurate.

“Q. What was that source?

“A. That was Mr. Cunningham, I think the name is, the postmaster of South City.

“Q. Did he tell you the price was \$500 an acre? A. Yes.

“Q. Did he claim to know anything about it?

“A. Yes. He subsequently denied that he told me anything about it, though— I should add.

“Q. And you used that information that you got from him?

"A. No, I got that information after I appraised the property.

"Q. Then you did not use it in appraising the property, did you?

"A. I used it in checking the final figures.

"Q. Tell us the information you had before you appraised the property?

"A. The only information I had before appraising the property was general.

"Q. What was it?

"A. What I classify as the general information a man has in his business.

"Q. What is it?

"A. He knows approximately what the effect upon a piece of land is, of being in competition with similar land for the same purposes where the large tract is all owned by the one company which is exploiting the district, as is the case there; he knows the possibilities of securing factories for such localities; in that particular instance, one would naturally know of the talk of introducing a slough or a channel which would give them a harbor.

"Q. Was there any talk of that kind? A. Yes.

"Q. Touching this property?

"A. The harbor would not touch this property. That was all speculative, though, it was merely in the air, like all that boom stuff.

"Q. What other information did you have before you fixed a value of \$342 on this property?

"A. I knew something of the experiences in other localities.

(3527) "Q. What localities? A. Redwood and Palo Alto.

"Q. Did you compare Redwood and Palo Alto, the waterfronts of those places, to this property? A. The waterfront of—

"Q. Answer that question 'Yes' or 'No' and then make your explanation.

"A. I wish to state, Mr. McCutchen, that there are some questions that I find it impossible to answer 'Yes' or 'No.'

"THE MASTER: Q. If you cannot answer it 'Yes' or 'No' say so.

"A. I cannot.

"Q. Answer it in your own way.

"A. In valuing this property I took into account, of course, what I knew of every other locality and of all the waterfront schemes which I had any knowledge of. To that extent, I used information I had relative to Redwood and to Palo Alto.

"MR. McCUTCHEN: Q. What is the water scheme at Palo Alto of which you have knowledge?

"A. There is no water scheme at Palo Alto except very dimly in the future.

"Q. Then what did you take into consideration as to the Palo Alto water scheme, if you call it such?

"A. I had in mind particularly, the effort to get factories.

"Q. Where? A. At Palo Alto.

"Q. Which failed to succeed? A. Absolutely."

I cannot think it will be argued that a man who will make that sort of an exhibition of himself is to be taken seriously, or that his opinions are to be taken against the opinions of such men as Baldwin, Hoag and Rodgers. If this were an isolated instance or circumstance, it would not be of so much importance, but this record contains other illustrations of the same general nature. Now, if your Honor please, I have concluded my discussion of Smith's testimony, except to incorporate in the record, so that it will be easily accessible in connection with this discussion, the figures of the three witnesses who valued the whole of the Peninsula property. Baldwin's figures were \$2,869,216. Hoag's figures were \$2,801,941. Those values included the 640 acres which Mr. Grunsky said would be submerged when Crystal Springs dam was raised, so that a deduction has been made from those figures as shown by Exhibits 166 and 180, reducing Baldwin's

figures to \$2,741,856, and Hoag's figures to \$2,668,181. To each of those sets of figures should be added the figures of Grunsky, \$3,388,000, making as the aggregate of the figures of Baldwin and Grunsky \$6,129,856, and as the aggregate of the figures of Hoag and Grunsky, \$6,056,181, as compared with \$1,605,013 for Smith to which, if the figures of Dillman be added (\$159,370), we have a total of \$1,764,383, or, in round figures, about 25%—

MR. SEARLS: That is, our figures are one-quarter of what is reasonable, or yours are four times what is reasonable?

MR. McCUTCHEN: That is a very apt way of putting it, Mr. Searls. In round figures about 29%.

Trans-Bay Lands.

MR. McCUTCHEN: I shall next take up trans-bay lands. The witnesses on real estate on the east side of the bay were Gale, Schween, Clayton, Parks and Mortimer for the plaintiff, and Callaghan, Parsons and Means for the defendants. Connolly and Fallon also gave some testimony on realty values, but I doubt very much whether any considerable importance will be claimed for their testimony, that is to say, so far as the value of real estate is concerned. I regard the appearance of Connolly and Fallon in the case, however, as of much more importance than the testimony which they gave.

I shall pursue the same course with reference to the discussion of these trans-bay lands that I did with reference to the Peninsula property; that is to say, I do not intend to take up the testimony of plaintiff's witnesses, nor do I intend to devote any time to a discussion of their testimony. I think I may say that, generally speaking, they were men who had had considerable experience in the field in which they testified.

I cannot refrain from calling attention to the manner in which Gale conducted himself. From start to finish I think it may fairly be said he showed a grasp of his subject and a spirit of candor. That he knew his subject thoroughly, particularly so far as Pleasanton lands were concerned, there cannot be serious question.

He was born and reared in the community in which he now lives. He has known for many years all of the Pleasanton properties and many of the other properties, the value of which is in issue here.

Schween has lived around Pleasanton for many years, has bought and sold considerable land on his own account, is director of a bank there which lends money upon land, and is a practical farmer and stockman. He has had just that sort of experience which should qualify him to testify to the market value of the properties which were considered by him. At the time he testified he was in the service of the company.

Clayton is president of a large banking institution at San Jose. Before accepting that position he was for many years actively engaged in the real estate field. He had had a great deal of experience in the purchase of properties in and around Calaveras Valley and other properties of a similar nature. He should be as well qualified as anybody to give an opinion on the value of our Santa Clara real estate, and the lands adjacent to it.

Mortimer had had a great deal of experience in the sale of lands similar to the Pleasanton lands and appeared to have excellent qualifications.

With regard to these witnesses, I shall pursue the same course that I did with reference to the witnesses called by the plaintiff on Peninsula values; that is to say, I shall assume that if there is any reason why their opinions should not be accepted, it will be pointed out to your Honor by counsel on the other side, and I shall devote to the witnesses for the defendant the time which I shall consume in a discussion of realty values so far as the trans-bay system is concerned.

And before taking up the discussion I desire to call your Honor's attention to a tabulation of the values placed by Parsons and Callaghan upon the lands on the other side of the bay. They valued 49,038½ acres; their values ranged from \$4.50 to \$500 an acre and they agreed within less than one per cent.

In my opinion, the one witness for defendants whose testimony

merits much of a discussion, so far as this branch of the case is concerned, is Callaghan. I say this because, in my opinion, he is a much stronger character than Parsons and I have no doubt that his was the dominating influence that resulted in the figures—practically identical in all cases—given by him and Parsons.

I shall make only a passing reference to Means.

Callaghan is a man of a great deal of cleverness. That he has had neither training nor experience to qualify him to express a dependable opinion as to the value of the real estate with which he dealt, I believe to be a statement fully justified by his own testimony. He has employed to advantage the cleverness that often enables one having only a superficial knowledge to create a first blush impression that he is quite master of the situation. He is one of those experts whom I had in mind when I said they were willing to become advocates of the side that employed them. It is farthest from my intention to treat Callaghan with severity or unkindness or unfriendliness. As a result of our several months' association with him we all found him to be quite attractive but, above all else, we found him quite resourceful. From a very careful study of Callaghan and his methods, I am satisfied that he was as partisan as the counsel employed to present defendants' case. I think he is so constructed that the acceptance of one of his valuations, whether correct or not, would afford him much more gratification than a realization that the plaintiff had received the full value to which it was entitled.

I referred to Connolly and Fallon a while ago. The presence of Connolly and Fallon in the case is due to the activity of Callaghan, and I think, while that is a small circumstance in one sense, it is nevertheless a straw that shows how the wind was blowing. You remember the first appearance of Connolly in the case. He went with Callaghan to an elevated spot from which he could look down on part of the Calaveras country, and with that preparation, Callaghan brought him here and put him on the stand, knowing, as he must have known, that from the super-

ficial knowledge which Connolly had, he was entirely without qualification to express an opinion fair to the property with reference to its availability or value. Nevertheless, Callaghan put him upon the stand to have him condemn, unqualifiedly condemn the Calaveras range. Of course it is inconceivable that Callaghan did not know to what Connolly intended to testify. Now, I only suggest that for the purpose of showing an entire lack of fairness on Callaghan's part. We heard Callaghan protest his fairness, times, times without number, while he was on the stand, but I think we must all instinctively feel that a man who was bent on fairness would not have produced, and would not have permitted to testify, a witness whose lack of knowledge of the situation was as great as Callaghan knew Connolly's was at the time he brought him here to testify.

You may recall that Callaghan said that for the purpose of forming his opinion with reference to the value of these Spring Valley lands he had talked with certain wealthy men, men who had made a success in life. I have no doubt that one of the "wealthy and successful men" with whom he did talk, and whose opinion he was willing to accept in forming his own, was this same Patrick Connolly who was willing to condemn property of the merits of which he was as ignorant as a man who had never been within miles of it.

Fallon.

Another witness for whose presence in the case Callaghan is to have the credit is Fallon. Callaghan found Fallon and Fallon came here and testified, and among other things he testified that he did not know when he came here what he was wanted for or that he was to be a witness. But when he got here he was quite willing to testify to realty values in and about Calaveras in which locality he was not shown to have ever had any experience whatever. He testified that cattle could not be fattened for the market upon the grazing lands of the Spring Valley Company and, yet, we showed by abundance of testimony that the men who

raised cattle upon that range sold them to butchers who took them from the range to the slaughter house, and that they made good beef. I do not intend to discuss the testimony of these witnesses at length, but the time necessary to make short quotations from it will not be unprofitably employed.

I quote the following from the testimony of Fallon, at page 1423, referring to the Chabot land:

(1423) "Q. Who suggested to you that it was worth \$100 an acre?

"A. Nobody suggested it to me at all. This was my own idea.

"Q. Did you ever hear \$100 an acre mentioned until you took the stand this morning? A. No sir, I did not.

"Q. Did you ever tell anybody, before you took the stand this morning, that you were going to place a valuation of \$100 an acre on it?

"A. As far as that is concerned, I don't know that I have either. That is my idea of the land.

Q. It is your present recollection, is it, that up to the time you took the stand this morning you had not told anyone that you were going to testify that the land was worth \$100 an acre?

"A. To the best of my recollection I didn't know that I was going to testify.

"Q. When didn't you know you were going to testify?

"A. When didn't I know? Not until I came here this morning, I didn't know that I was going to testify.

"Q. And until you took the stand you had not mentioned to anyone you were going to place a valuation of \$100 an acre on that land?

"A. Now that I won't say exactly because I may have casually made the remark what I considered it was worth.

"Q. Then if you made the remark it was only casually made; is that it?

(1424) "THE MASTER: I take it that that is what he means, Mr. McCutchen; that is what he says.

"MR. McCUTCHEN: Q. You didn't compare views with anybody with reference to the value of that land, did you?

"A. No, sir, I did not.

"Q. Nobody else told you what they thought it was worth?

"A. That I won't say because I don't remember.

"Q. Mr. Callaghan did not tell you what he thought it was worth, did he?

"A. I paid no attention to what Mr. Callaghan said because I didn't know Mr. Callaghan's purpose.

"Q. At any rate, Mr. Callaghan did not suggest to you what he thought the land was worth in any of the talks you had with him? A. That I don't remember.

"Q. Did anybody else make the suggestion to you?

"A. Not that I remember.

"Q. You said that when you came here this morning you didn't know you were to testify; is that correct?

"A. I was asked to come here to this particular place.

"Q. But you didn't know for what purpose.

"A. For what purpose, no.

"Q. And when you made this trip to the Calaveras Valley ten days ago you didn't know for what purpose you were going there.

"A. I was asked in regard to a stock range, my judgment of a stock range, and that is all I knew; I didn't know whether these parties wanted to rent land or to buy land or for what purpose they wanted my ideas.

"Q. Then when you went upon the land ten days ago, you did not go upon any portion of the stock range, did you?

"A. No, I don't consider that I did, unless whatever stock range was on each side of the road going up to the valley from Milpitas; I don't know whose land it is or anything else.

(1425) "Q. When did you first see Mr. Callaghan with reference to this case?

"A. I suppose it was 10 or 12 days ago since I saw him, as near as I can recollect.

"Q. Had you seen him before that?

"A. No sir, I had not. I seen him several times in the town of Livermore but had no talk with him on any business whatever.

"Q. At whose request did you come here this morning?

"A. At Mr. Callaghan's request.

"Q. Did he tell you you would be compensated?

"A. He told me he would pay my expenses; that is all I know.

"Q. He said he would pay your expenses, or that someone else would?

"A. He didn't tell me who would pay them; he said my expenses would be paid.

"Q. You didn't know in whose interest you were coming here when you came, did you?

"A. No sir, I did not, but the valuation of some land as a stock range; I was brought out in the country and was to give my idea about this country and did I buy any stock in it and so forth; that is all I know about it.

"Q. Do you know whether you have ever been upon a single acre of the hill land, the value of which is to be determined here?

"A. Do I know that I have ever been on a single acre of land the value of which is to be determined here?

"Q. Of the hill land owned by the Spring Valley Water Company?

"A. In regard to that I don't know where the Spring Valley land is or where the Spring Valley lines are at all; I don't know where they are or where they lay.

"Q. Then, so far as you know you have never been upon an acre of land owned by the Spring Valley Water Company?

"A. Yes— I understood the Calaveras Valley—

"Q. (Intg.) I am speaking of the hill lands, not the valley.

(1426) "A. The hill lands I don't know; I could not tell you any section.

“Q. And you could not tell us any section through which you pass on these trips you made to Calaveras Valley and out of Calaveras Valley? A. No sir.

“MR. SEARLS: Are you preparing to deny the ownership of the hill lands?

“MR. McCUTCHEN: I think my question is plain. I want to know where this witness went and what he saw.

“MR. STEINHART: We will clear it up on re-direct examination.

“MR. McCUTCHEN: Q. When you say that two-thirds of that country is \$2.25 land, to what country do you refer?

“A. I refer to that country east of the Calaveras Valley, to the best of my opinion, sir.

“Q. Beginning how far east of Calaveras Valley?

“A. Beginning at the very edge of the valley and going east through them mountains to the San Joaquin Valley.

“Q. Where have you ever known and when have you ever known of a sale of land in that locality at \$2.25 an acre, or any other price. A. When have I known of it?

“Q. Yes. A. I don't know of any sales at all.

“Q. What do you mean by the value of land?

“A. I mean by the value of land what it will produce and what it will pay interest on.

“Q. What will that land you speak of as being worth \$2.25 an acre pay interest on?

“A. I would not consider it would pay interest on \$2.25 an acre—that is, two-thirds of it.

“Q. How do you figure interest, at what rate do you figure interest? A. At 6 per cent.

(1427) “Q. What would 6% of \$2.25 be? A. If you are going into figures I would have to have a lead-pencil and a book.

“Q. I will give them to you.

“A. I am in no particular hurry to figure.

“Q. Tell us what 6% of \$2.25 would be?

“A. You can figure that; I am not an expert figurer.

“Q. The fact is, Mr. Fallon, you are unable to tell what 6% on \$2.25 would be, isn't it? What do you think it would be? Give us your best impression of what 6% on \$2.25 would be. Well let us have it Mr. Fallon?

“A. I told you I am not an expert figurer.

“Q. I am not asking you for expert figures; I am asking you to give us your impression of what 6% on \$2.25 would be?

“A. That is a question I cannot answer.

“Q. What then do you mean by saying that this land is only worth \$2.25 because it won't pay interest on more than that sum? A. What do I mean?

“Q. Yes. A. Now, you are talking about a stock range; I base it on taking 15 acres of that land to keep one steer. That is what I mean.

“Q. Well, what would 15 acres be at \$2.25 an acre?

“A. 15 twos and 30 and 15 quarters—I guess you can figure that yourself, can't you?

“Q. That would be \$33.75, wouldn't it? A. Yes, \$33.75.

“Q. How much more would the steer be worth at the end of the year than at the beginning of the year?

“A. Where are you going to get that steer to start in? You have to raise that steer first. A calf that you can raise, the valuation of that calf is from \$22 to \$22.50 at the present prices. You raise (1428) that steer until he is a 3-year old steer and the outside price that steer would bring then would be probably \$65.

“Q. In other words he was worth as a yearling how much did you say—did you say \$22? A. Yes, about \$22.

“Q. And as a 3-year old he would be worth \$65? A. Yes, sir.

“Q. 22 from 65 would be 43, wouldn't it—is that correct?

“A. Yes.

"Q. Then you think land that will maintain a steer and give you a profit on him of \$43 in two years is only worth \$33.75?

"A. Where do you figure the profit of \$43? You have three years use of that land, you have three years interest to pay on that land to start in with.

"Q. I tried to ask you what that would be, but you said you couldn't tell me.

"MR. STEINHART: I suggest that you figure 6% on \$2.25, Mr. Fallon, you can do that.

"MR. McCUTCHEN: I don't think that suggestion from counsel is proper. If the witness can do it he ought to have done it when I asked him to.

"MR. STEINHART: Well, I wouldn't have done it for you, I know.

"THE MASTER: Pass on to your next question, Mr. McCutchen.

"MR. McCUTCHEN: Q. According to your statement the steer would increase in value during those two years \$43. Is that correct? A. Yes sir.

"Q. What other element would there be to make him worth \$43 except the pasturage on the \$33.75 worth of land?

"A. The upkeep of the land, herding and all those things, the herder, his board and wages, your taxes on your land, and so forth.

(1429) "Q. Then you think as a stockman, do you, that land that will keep a steer and produce a profit of \$43 on it at the end of two years is only worth \$33.75?

"MR. STEINHART: He didn't say it was worth \$33.75.

"MR. McCUTCHEN: Q. What did he say? He said it would take 15 acres to maintain one steer, and that 15 acres would be worth \$33.75. Is that correct, Mr. Fallon?

"A. Are you figuring three years interest on that money?

"Q. What would that be? Mr. Steinhart says you can figure

it. What would it be? A. The upkeep and everything else considered—I can't figure it just now.

“Q. At any rate, that is your understanding of the profit that a stockman would make?

“A. That is my idea of the profit. You know how it runs now and what I base my value of the land on.

“Q. Tell us where you can buy any such land as that for \$10. an acre?

“A. Well, the Corral Hollow land was sold last week, in Corral Hollow, for \$6.00 an acre, and I consider it far ahead of your land.

“Q. At what elevation is that land? A. I could not tell you what elevation; it is 10 miles from Livermore.

“Q. Is it within the snow line? Is it above the snow line or below the snow line?

“A. No sir, it is not in the snow line at all.

“Q. How high is it compared with these Calaveras lands?

“A. I could not tell you. The Patterson Pass I should judge is about 1,000 feet over sea level, as near as I can judge.

“Q. What other sales have you known of lands similar to these? A. I have known of the Callaghan Ranch.

“Q. Where is that? A. That lies in Corral Hollow, bought by Patrick Connolly of Livermore for \$9.50 an acre.

(1430) “Q. When? A. Three years ago.

“Q. What other sales? A. I cannot call any to mind just now.

“Q. Tell us of some sales at \$2.25 an acre?

“A. I don't know of any.

“Q. Aside from what you have already told us, how do you form an impression of the value of grazing land?

“A. I told you on what I formed my opinion, on the interest that it would produce.

“Q. Have you heard of a sale of lands in those mountains at \$2.25 an acre? A. Not unless it was government land, that I know of.

“Q. Have you ever heard of a sale from one private party to another private party of lands for \$5.00 an acre?

“A. Yes sir, I have.

“Q. Where? A. Pat Connolly has bought several quarter sections from men around in the Corral Hollow country for \$5 an acre.

“Q. Have you ever known of a ranch, that is to say, a ranch large enough to maintain a herd of cattle, being sold for \$5.00 an acre in that neighborhood, or anywhere in those mountains?

“A. No, I have not. There are 4,000 acres in this Corral Hollow Ranch, that was sold last week for \$6 an acre.

“Q. Do you say that that land is comparable with the land of the Spring Valley Company around the Calaveras Valley?

“A. I consider it is far ahead of that.”

The testimony of this witness is not only unfair; it is untrue. And it is beyond belief that Callaghan did not know what it was to be before the witness was put on the stand.

Connolly.

Connolly was called at an early stage of the case and was prepared to express an unqualified condemnation of the Spring Valley grazing lands. It was found that he had no knowledge or information whatever regarding the properties with reference to which he was called to testify. He appeared at a later stage and stated that since first being sworn he had visited Calaveras Valley with Callaghan. He described the trip which he took with Callaghan. His first trip to the property, or rather to look at it, because he did not go upon it, was also with Callaghan. Callaghan took him to an elevation from which, it goes without saying, he could have had only a bird's eye view and a superficial bird's eye view at that, of the country, to the value of which he was to testify. But after going to that elevation with Callaghan, he came here prepared to condemn the whole range. He stated that on that first trip they did not go to the east side of the valley at all; that on the west side they got out and looked

over the land on both sides of the road; then came to the dam and looked at several pieces on the west side of the valley. They looked over at the east side, but did not go to or through it. This the witness says was his whole experience with the grazing land up to the time that he took the stand on the first occasion when, as I have said, he was prepared to pronounce an unqualified condemnation of it. I quote:

(3044) "Q. That is to say, from this survey you made above the dam, you looked over the country and condemned it: that is the fact, isn't it? A. Yes, that the country was poor.

"Q. And then you went over it with Mr. Callaghan to verify the opinion you had previously expressed?

"A. My opinion was always the same.

"Q. Didn't you go with Mr. Callaghan to verify the opinion you had previously expressed?

"A. I went with Mr. Callaghan to make a thorough examination of the land and give you the best idea I could of the land, and I am doing that now.

"Q. Mr. Callaghan told you before you went there, that the range was a very poor range, didn't he? A. No sir.

"Q. He did not? A. No sir.

"Q. Didn't you tell him that?

"A. I expressed my opinion when I went over it with him.

"Q. Well, before you went over it with him; you had gone with the Spring Valley man and saw that it was a poor range. Didn't you tell Mr. Callaghan before you went with him that it was a very poor range?"—And, by the way, when he went with the Spring Valley man he only went to the dam site and looked at the lands on either side of the road going up the canyon.

"A. No sir, not before I went with him.

"Q. So you had no impression about it?

"A. I had an impression of the land below, but not of the land we are talking about now.

"Q. Which land is it you had an impression about?

"A. Of all the land down from the dam and clear down the Alameda Creek on both sides; I had an impression of that; but not as to the land we looked over last; I had no impression of that.

"Q. What further examination had you made when you came upon the stand here sometime ago and expressed an opinion?

"A. I went in with Mr. Callaghan as I told you the first time and looked over that land.

(3045) "Q. Where did you go with Mr. Callaghan?

"A. We went through the valley and went up a little on the hills and looked at the nature of the grass and saw—

"MR. SEARLS: Just a minute, Mr. Connolly. If your Honor please, counsel has developed all this matter before; his previous examination was along the same lines.

"THE MASTER: Yes.

"MR. McCUTCHEN: Q. How much time did you spend with Mr. Callaghan there? A. The first time?

"Q. Yes. A. Three or four hours.

"Q. Is it not a fact that you drove through the valley very hurriedly? A. We might have drove hurriedly but we stopped at several places and got out and went around.

"Q. Did you go on the east side of the valley at all at that time? A. No; not on the east side.

"Q. What lands on the west side of the valley did you go on?

"A. We got out and looked over the land on both sides of the road and then came to the dam; then we went and looked at several pieces on the west side of the valley; we looked over at the other side but didn't go through it.

"Q. You have told us all of your experience with that grazing land up to the time when you took the stand the first time, have you? A. Yes.

"Q. And on that you came here and condemned the land, didn't you? A. No sir.

"Q. Didn't you come here to express an opinion unfavorably to it as grazing land at that time? A. No sir, I did not.

"Q. Did you not express an opinion? A. No sir, I didn't—I expressed an opinion of what I thought of the land.

"Q. Didn't you tell Mr. Callaghan before he brought you here, that you would come here and testify it was poor land?

(3046) "A. No sir; I was never asked to testify it was poor land, nor did I say I would testify to what my opinion was of the land."

Now, of course, I don't know what the witness means by that but we cannot take him at what he says.

"Q. What did you come here for on that first occasion?

"A. To give my opinion of the land.

"Q. You were going to give an opinion unfavorable to it at that time, were you not? A. No sir.

"Q. What were you going to say about it?

"A. Just give it as I seen it.

"Q. Were you not going to say it was poor grazing land?

"A. I certainly did when I give my opinion as to what the land was.

"Q. When you came here before, you were going to testify that it was poor grazing land, weren't you?

"A. I was going to give my opinion of only what I seen. Mr. Callaghan or nobody else could make me give any other opinion.

"THE MASTER: Q. The point is, your opinion then is the same as it is now?

"A. Just exactly; I went over the land and I didn't change my opinion at all.

"MR. McCUTCHEN: Q. That is to say, without making an examination you formed an unfavorable opinion?

"A. I could see the country. If you bring me to a country, if you put me on a peak and I can look over the country I can form my opinion as to what that country is."

Connolly was Callaghan's discovery in this case. It goes without saying that he knew exactly what Connolly intended to

say when he took the stand. He knew that Connolly had no qualification which would warrant his condemnation of the Spring Valley range, and nevertheless, in order to bolster the unfair opinion which he, Callaghan, had given of the land, he was willing to use Connolly for what he might be worth.

In view of Callaghan's own testimony, it is worth while, although somewhat out of sequence, to call attention to another portion of Connolly's testimony. You will remember that Callaghan said Corral Hollow was a country favored by nature, a country of farms and ranges, in which, according to him, no fruit tree was ever known to have been planted; a country favored by nature, a much better country than the Calaveras country. And when he was asked who had told him that it was a country favored by nature, he mentioned two names, and one of them was Pat Connolly. In view of that it is interesting, although, as I have said, out of sequence to call attention to a few words of Connolly's testimony with reference to Corral Hollow. Connolly did not know the normal rainfall in Corral Hollow. He was asked:

(3041-2) "How long have you lived there?"

"A. I have lived there since 1873. I have not been there steady, I have been there every once in a while.

"Q. And having lived in a place since 1873, you are not able to tell what the rainfall is?

"A. We live in Livermore; our home is there. We keep our stock 6 or 8 months in the year out there, just to feed them.

* * * * *

"Q. Why is it you don't run you stock there for more than 6 or 7 months in the year?

"A. Because our stock will not do on this feed for more than 6 or 7 months in the year and make a profit off the stock."

To emphasize Callaghan's fairness, let it be said that this Corral Hollow country is one of the grazing localities so much better than Calaveras lands, and sales in which he used for the

purpose of depressing grazing land values on the Spring Valley ranges.

These two witnesses, Fallon and Connolly, appeared in this case for no other reason than to do Callaghan a good turn, and as I have said, Callaghan produced them, not to throw any light on the case, but in an endeavor to support his own valuations.

Callaghan.

But I am rather getting ahead of my story. With reference to lands in and about Pleasanton, San Antonio and Calaveras, Callaghan was without any experience which warrants the inference that he was able to put a fair valuation upon them. For many years he had been a warehouseman in Livermore and had devoted some time to the acquisition of rights of way for the Western Pacific. Just what was the scene of his activities so far as that work was concerned the testimony does not disclose. He had been a real estate agent, he says, for a time, and during a period of six years had made sales aggregating about \$50,000. The scene of his activities is not definitely stated, but, from what he has said, there can be no doubt that it was limited to Livermore and its vicinity. I think it may be taken for granted that he had some knowledge of realty values in the neighborhood of Livermore, but that he knew anything of a nature qualified to make him an expert on realty values in the localities in which these properties are situated would be a conclusion entirely unwarranted by anything which this record contains. It is worthy of remark that his valuation of these lands is almost invariably with reference to what he assumes to be the profit which a farmer or a stock-raiser could make upon them. That is not always so, but it is almost invariably so, and it is very rarely indeed that a figure was placed by him based upon the market price of similar land.

That is noticeably the case with reference to the Pleasanton lands, the flat lands on the Hadsell property and the lands on the floor of Calaveras Valley. I think I am well within the fact

when I say that Callaghan's testimony will be searched in vain for any statement or suggestion that his valuation of those properties rests upon knowledge of sales of similar properties or prices asked for similar properties. It is a fair statement that he has never had any experience of any kind as owner of, agent for, broker for the sale or purchase of, or tenant of, any property to which the Pleasanton properties are comparable. It is safe to say that he does not know what can be produced on the Pleasanton lands. He knows nothing of the yield of a given crop that can be produced. He is not shown to have ever planted any crop, no matter how small, of the nature of those grown upon the Pleasanton lands. He talked extensively of alfalfa culture, and he has never planted or cultivated a square foot of alfalfa in his life. He talked of beet culture and vegetable culture, and he is not shown to have had any experience in either. Never during his entire career did he have anything to do as owner or tenant of, or as agent for, any lands similar to those on the floor of Calaveras Valley or to the flat lands in the Hadsell tract. He did not cite to us a single sale, a single transaction, which showed he had any familiarity with the market price of lands like the Pleasanton lands or like the Hadsell flat lands, or like the flat lands of Calaveras Valley. It is not an unfair statement to say that he was, to all intents and purposes, ignorant of real estate transactions in and about Pleasanton. If an appraiser were without knowledge of market values but did have an accurate knowledge of what land would produce, he might at least express an opinion as to its value, but as I have said, Callaghan was entirely without information of this nature. Not knowing what such lands would sell for from a knowledge of sales of similar lands, he was without that information, the possession of which was absolutely necessary to enable him to express an opinion of the market value of these lands. Not knowing what the lands would produce, he was certainly without information that would enable him to tell their intrinsic value. I am prompted to some

extent to throw out this suggestion on account of Parsons' attempt to distinguish between intrinsic value and market value, to which I shall refer a little later on.

A knowledge of the hill lands around Livermore certainly did not qualify Callaghan to give the value of lands around Pleasanton, which he says are among the very best lands in California. While I have no doubt that those Pleasanton lands are entitled to that compliment, I do not think it means much coming from Callaghan, because he is not shown to know anything about good lands elsewhere. Whenever his valuation of a piece of land was challenged, he invariably fell back upon the statement that he knew what a farmer could make out of the land. In the great majority of cases he failed to call attention to any transaction which lent support to his conclusion. This statement, I think, is fully borne out by the testimony of the witness.

Before I come to a discussion of Callaghan's testimony as to value, I have thought it important to refresh your recollection regarding his statements with reference to the availability of Calaveras lands for reservoir purposes. Frankly, I do not regard, and I do not think your Honor can possibly regard, the testimony of Callaghan with reference to the availability or non-availability of Calaveras for reservoir purposes as of any importance whatever; that is to say, as of any importance in determining the value of the property. But from another standpoint, his testimony on that subject is very enlightening. He knew absolutely nothing about reservoir value. He had no information of any kind that would enable him to deal with reservoir value even remotely, but he was perfectly willing to say that the figure which he had placed upon the Calaveras lands within the area to be covered by water included all the value which those lands had for any purpose, including reservoir uses. In other words, he was willing to "deliver the goods". His testimony on that subject showed an absence of that keen sense of veracity, that ring of truth, from which an honest witness cannot be shaken. I undertake

to say that no cross-examiner is clever enough to ruffle or embarrass an experienced witness of the keen intelligence of Callaghan if that witness is bent upon telling nothing but the truth, and on the other hand it is an almost impossible task for a witness even of Callaghan's cleverness to make a long story consistent unless he is telling the truth.

And now let me get back to the testimony of the witness with reference to reservoir value and the value of the Arroyo Honda lands for their water yield.

(2385) "MR. McCUTCHEN: Q. Mr. Callaghan, in determining the value of this property, did you take into consideration the fact, or assume, that it was available for any purpose except for agricultural purposes?

"A. In placing a value on the property, Mr. McCutchen—

"Q. Answer that question 'Yes' or 'No' and then you can make an explanation afterwards.

"THE MASTER: Yes, answer that 'Yes' or 'No'.

"A. Yes, I did.

"MR. McCUTCHEN: Q. For what purpose did you assume it was available?

"A. I assumed it was available for agricultural purposes, for pasturage purposes, and in placing the market value upon that property, I assumed that that market value represented its value for all purposes it could be used for.

"Q. For what purpose other than agricultural and pasturage did you assume the property within the water line of Calaveras reservoirs to be available?

"A. For any other purpose that it could be used for.

"Q. For what other purpose can it be used?

"A. Well, it can be used for a multitude of other purposes; it can be used for building sites; it can be used for several purposes

"Q. What other purposes besides building sites?

"A. Reservoir sites.

"Q. You did, then, assume that that property was valuable as a reservoir site, did you?

(2386) "A. I assumed that it might have that value, yes.

"Q. You know that all of the land necessary for a reservoir site there is in one ownership, don't you? A. Practically, yes.

"Q. You say 'practically'; you know that it is all in one ownership, do you not? A. Yes, the land necessary for a reservoir site is all in one ownership.

"Q. Is a reservoir needed over there?

"A. I cannot answer that question; I don't know.

"Q. If you say you don't know whether a reservoir is needed, why do you say that you took into consideration the fact that it was available for reservoir purposes?

"A. The fact, though, whether it was needed or not would depend upon the owner of the property, the use he wanted to put it to.

"Q. Would it be available for the use of someone else for reservoir purposes, that is to say, someone other than the owner?

"A. The owner would have to part with his ownership to that to someone else before it would be available to that someone else for that purpose.

"Q. I am speaking about its availability in the market. I will withdraw that question. It would be available for that purpose in the hands of anybody, wouldn't it?

"A. It would, yes.

"Q. What is its value in the hands of anybody for that purpose? A. Its market value.

"Q. Its market value for what?

"A. For all purposes. I consider the market value of property is what the property is worth for any purpose that it can be used; in other words, I consider that the market value is the price that a willing buyer will pay to a willing seller when they come together, having in view all the uses to which the land can be put, and they will then decide upon that as the market value;

and I consider that (2387) the purchaser who has bought at that market value has acquired from the owner the right to the use of that land for any purpose that he may want to use it for.

"Q. Have you discussed this particular question with anybody?

"A. I discussed this question last night with Mr. Steinhart and Mr. Searls.

"Q. Had you discussed it with them before that?

"A. No, I had not.

"Q. You had not said anything to them before yesterday about reservoir value?

"A. I have heard them talking about reservoir value, but I did not enter into the discussion with regard to my knowledge of reservoir values with them up to last night.

"Q. I am not talking about your knowledge of reservoir values; I am asking you whether before you went on the stand you had had any discussion with them as to their theory upon which this land should be valued? A. No, I did not.

"Q. You didn't know anything about that?

"A. No, I didn't know what their theory was of valuing this land for reservoir purposes, or whether they intended to value it for reservoir purposes, or not.

"Q. And you did not know, up to the time that you were questioned on that subject by me yesterday, what their view or theory was in regard to the valuation of this particular property, this Calaveras property? A. I was present at a discussion—

"Q. Answer the question 'Yes' or 'No' and then make your explanation.

"A. Yes, I had some knowledge of their view or theory, because I heard them discussing it with Mr. Means one day, and their view and theory, so far as I gathered it from the discussion was that the land was valuable for reservoir purposes only in so far as its market value was concerned."

Now apply that answer to the answers which this witness has

previously made and I ask in all candor was he endeavoring to deliver the goods. Let us see what he unfolded later on:

“Q. And you were trying to maintain that theory yesterday, were you not? A. No, sir, I was not;”—

There can be no question that that is just what he was trying to do.

“I was answering those questions just (2387) as I saw the situation before me, without trying to maintain or bolster up anybody's theory in the matter.

“Q. As a real estate expert, Mr. Callaghan, do you state that the value of that property for agricultural purposes has any relation whatever to its value for reservoir purposes?

“A. I will have to go back—

“Q. Answer the question ‘Yes’ or ‘No’ and then make your explanation. A. Yes, I do. Now, will you let me explain?

“Q. Go ahead now with your explanation.

“A. As I have said before, I believe that the market value of that property represents its value for all purposes.

“Q. In determining its market value, is it necessary to take into consideration its availability for all purposes?

“A. Yes, it is.

“Q. To what extent, in arriving at its market value, did you take into consideration its availability for reservoir purposes?

“A. I considered that in purchasing that property, if I was called upon to purchase it, that I should acquire it in its entirety for all the uses that it could be put to for the price that I put upon it, that that was its market value, and that that market value included all the uses to which the property could be put.

“Q. I don't think that is an answer to the question. I will ask to have the question read to you. (Question read by the reporter.)

“A. And what was my answer, please? Will you please read my answer?

"Q. Just answer it again, without having your answer read to you.

"MR. STEINHART: I think he has a right to get his answer if he wants it.

"THE MASTER: No. Let him answer it again. I don't care to have the witness pass on his own answer. Answer the question as it is put.

(2389) "A. In arriving at its market value, I took into consideration all the purposes that it could be used for.

"MR. McCUTCHEN: Will you repeat the question, Mr. Reporter?

"THE MASTER: He wants to know to what extent you took into consideration its value for reservoir purposes. How did you estimate that, for example?

"A. Whatever relation its value for reservoir purposes bore to its market value was all included and considered in its market value.

"MR. McCUTCHEN: Repeat the question again, please, Mr. Reporter. (Question read by the reporter.)

"A. To that extent to which its market value related to its value for all other purposes.

"MR. McCUTCHEN: Repeat the question again, Mr. Reporter.

"THE MASTER: I think you have it as clear as you can get it; you have it as clear as he has it in his mind, Mr. McCutchen.

"MR. STEINHART: I think that is just what he means.

"THE WITNESS: I cannot get it any clearer in words.

"MR. McCUTCHEN: Q. Is it more valuable for reservoir purposes than for agricultural purposes—this reservoir site?

"MR. STEINHART: Which reservoir site?

"MR. McCUTCHEN: The Calaveras reservoir site.

"A. I could not determine its value for reservoir purposes, other than to say that what its market value is is its value for

all purposes. I could not say whether it is more valuable for reservoir purposes than for farming purposes, or for pasturage purposes, but I do consider that its value for all purposes is reflected in its market value.

“Q. Is it more valuable for reservoir purposes than for agricultural purposes?

(2390) “MR. SEARLS: I submit that he has answered that.

“A. I don’t know.

“MR. McCUTCHEN: Q. You don’t know. May it be more valuable for reservoir purposes than for agricultural purposes?

“MR. STEINHART: That is objected to upon the ground that it is immaterial, irrelevant and incompetent—may it be more valuable depends upon the desire the Spring Valley has for it now; it may happen that every other reservoir site within a thousand miles might have been destroyed; they may discover an earthquake fault through them and the only other available reservoir site may be Calaveras.

“THE MASTER: I think the objection is without merit; the objection is overruled.

“A. It may be more valuable for reservoir purposes than it is for agricultural purposes, but that will all depend upon the will of the owner of the property.

“MR. McCUTCHEN: Q. Is it not, in your opinion, much more valuable for reservoir purposes than for agricultural purposes? A. To my mind—

“Q. Answer that ‘Yes’ or ‘No’ and then you can explain.

“MR. STEINHART: If your Honor please, I don’t know what your Honor’s rule is, but I do not understand that there is any rule of law that a man must give a categorical answer.

“THE MASTER: I think the answer should be given ‘Yes’ or ‘No’ to a question of that sort, if he knows; if he does not know, he can say so.

“A. Yes, without any further knowledge—

“Q. The answer is ‘Yes’, is it?

“A. Yes, without any further knowledge than I at present possess of the uses to which it might be put for reservoir purposes, and the income to be derived from reservoir purposes, taken together with the cost (2391) of developing it for that purpose, it might be more valuable for reservoir purposes. I don’t know the details of those costs, though, nor the possible profits to be derived from its use for reservoir purposes.

“Q. Then your answer is not yes, that it is more valuable—your answer is that you don’t know, but that it might be?

“A. To my mind, it might be.

“MR. McCUTCHEN: Q. Is it not fair, then, to say that you don’t know anything about its value for reservoir purposes?”

Now, the answer to that was obvious; all it called for was an honest expression of the man’s inmost thoughts; he knew that he did not know anything about reservoir value; we all knew that he did not know it but he had endeavored to fill a gap. The object of the cross-examination was to show he was not competent to fill the gap.

“A. It is not fair. I think I know its market value, and I think that that value reflects its value for all the purposes that it could be possibly used for.

“Q. Now, Mr. Callaghan, in order to determine market value, you must know the availability of the property for all purposes, must you not?

“A. To a certain extent, you must know its availability for all purposes, but you must also know what similar lands are selling for in similar localities.

“Q. Where are there, in that locality, or within 25 miles of there, any lands equally available for reservoir purposes with this Calaveras site?

“A. I don’t know of anywhere within 50 miles or 100 miles where there are any similar lands available for reservoir purposes. If you can show me any similar lands available for reservoir purposes, and I can get a line on what they sell for, that will

help me in arriving at a value of the Calaveras lands for reservoir purposes; but I have not been able to find any.

“Q. Coming back to your answer of a moment ago, you said, did you not, that the value of these lands for reservoir purposes would depend upon the value of similar lands in the locality?

“MR. OLNEY: Just a moment, Mr. McCutchen.

“A. No, not entirely.

(2392) “MR. STEINHART: And he did not say that, as a matter of fact.”

But of course he did say it, just as I put the question to him.

“MR. McCUTCHEN: Q. You say there are no similar lands, that is to say, so far as their availability for reservoir purposes is concerned, within 50 miles of these lands: Is that correct?

“A. I don't know of any lands.

“Q. Now, going back to the question I asked you a while ago, in order to determine market value you must take into consideration the availability of the land for all purposes, must you not?

“A. Yes, you must take into consideration the availability of the land for all purposes, and also the prices that similar land used for similar purposes can be purchased for.

“Q. There is no land, you say, within 50 miles of this land available for the purpose for which this land is available?

“A. Then I can get no comparison for values from that source, and hence my only value of this land is market value, and that is the value that a willing buyer will pay to a willing seller.

“Q. In order to get market value, do you exclude its value for reservoir purposes because you cannot find any similar land within 50 miles of it?

“A. No, I do not exclude its value for reservoir purposes. I include everything that it might be used for in market value.

“Q. Do you know the value of land because of its availability for reservoir purposes? A. Yes, I do.”

Now, we know he didn't and he knew he didn't.

"Q. You do? Haven't you stated two or three times this morning that you had no experience that enabled you to determine that?

"A. I know the market value of land, and that market value includes every item of value that it may have for any purpose that it may be used for.

"Q. Let me read a question that was put to you yesterday and an answer that was made by you, as follows:

(2393) "Q. What experience have you had that enables you to determine the value of land for reservoir purposes?"

Now, your Honor can see how long this effort to get this witness to tell a simple truth had lasted.

"A. No experience at all in regard to the value of land for reservoir purposes, but I think if I went out to buy that land that I would buy it for that price, and only pay that price for it, that I would have purchased the right to do with it anything that I wanted to do with it after I bought it.'

"Q. Do you say now you have experience that enables you to determine the value of land for reservoir purposes?

"A. Yes, I do. That experience in the market value of land enables me to determine the value of land for all purposes that it can be used for. Now, that question that I answered yesterday afternoon expresses the thought that I had in my mind, and I have it now, that if I was sent out—

"THE MASTER: You have already said that.

"A. (Continuing) Can I state my reason?

"THE MASTER: You have already stated it; you need not repeat it.

"A. (Continuing) I didn't say that; I just want to express this: That if I was employed to go out and buy that land for the Spring Valley Water Company for any purpose that they might want to use it for and I could not buy it for the price that I appraised it at, I would come back and report to you that

you should proceed and condemn that land and get it for that price, and you would get it.

“MR. McCUTCHEN: Q. This further question was asked you yesterday, was it not, referring to this Calaveras land: ‘Suppose it was very much more valuable for reservoir purposes than for any other use, would you give it any value because of that?’

“MR. STEINHART: I don’t think that question was asked him, was it?

(2394) “MR. McCUTCHEN: Q. (Continuing) To which you answered, as follows:

“‘A. No, I would think that would be an after consideration, if it was found to be more valuable for reservoir purposes that would be an after consideration from the value that I gave it.’ Do you remember that answer? A. Yes, sir, I do.

“Q. Do you say now that you did give it the value which it had for reservoir purposes?

“A. I did give it all the value that I thought it had.

“Q. And you think that answer is reconcilable with the answer you made yesterday, do you?

“A. My answer yesterday was that that would be an after consideration; in other words, if the real in fact purchaser decided, after that, after having acquired the land, he could make better use of it and a higher use of it for reservoir purposes than the uses to which the land had been put under the former owner, it would be the purchaser’s privilege and right to use the land which he had bought and paid for at the market value for any purpose that he wanted; if a higher use was found by the new owner than the old owner had put the land to, the new owner should not be estopped from putting the land to the higher use.

“Q. In other words, for the purpose of buying the property, he would have the right to determine its market value upon the use which the previous owner had made of it, would he?

“A. Yes, he would.

“Q. That is to say, if the previous owner had used it for agriculture, this buyer should determine its value for agriculture, should he?

“A. If it had a higher value—yes, he should determine its value for agriculture, and if in his mind it had a higher value, there was no obligation upon him, he was not obligated to go to the owner and tell the owner that this property has another value higher than agricultural value, (2395) but I want to pay you for that value. There was no obligation on the prospective purchaser to inform the owner that this land had a higher value, provided the other owner knew that it had; he was privileged to buy the land and then after he acquired it at market value, to proceed and do with it anything that he wanted to do with it.

“Q. In determining that market value, what has the use which the previous owner put the property to to do with the question?

“A. It has everything in the world to do with the question.

“Q. In other words, the market value of land is its value for the purpose or use to which the previous owner has put it?

“A. Market value is—

“Q. Answer the question ‘Yes’ or ‘No’ and then you can make your explanation.

“A. It is not. Market value is the value arrived at and determined upon when a willing buyer meets a willing seller, both taking into consideration the uses to which the land can be put. That is market value.

“Q. In the answers which you gave here, did you take into consideration the availability of this land for reservoir purposes?

“A. In the answers which I gave here, yes, I think I did in my answers in every case.

“Q. Didn’t you repeatedly state on your direct examination and your cross-examination that you had endeavored to determine what income a farmer could derive from these properties?”

And, I will show your Honor a little later on that when we

asked for his yard-stick with reference to the Calaveras Valley land he gave it solely and only as the revenue or return which a farmer could get from planting hay and grain there.

“A. That I reiterated often as one of the ways and one of the means I had adopted in arriving at the market value.

“Q. Will you look at your written report and refer us to one single piece of property in reference to which you say it is available for reservoir purposes or for water production?

“A. From my recollection, I do not think that my report in any part shows where I have mentioned that any of this land is available for water production or reservoir purposes.

(2396) “Q. Now, you say that this Calaveras land may be more available for reservoir purposes than for any other purposes, do you?

“A. Finishing that last answer, Mr. McCutchen, but that was no indication that I did not consider all the purposes for which the land could be used.”

He was not going to get away from that; he did not intend to make any mistake about giving the defendant an opportunity to claim that Mr. Callaghan had taken into consideration the value of this land for reservoir purposes in fixing his value.

“Q. Why was it, if you took into consideration its availability for reservoir purposes or water production, that in no single instance did you mention that in your notes?

“A. Because I always considered, Mr. McCutchen, in appraising this land, that when I appraised it at market value I appraised it at its full value for any purpose it could be used for.

“Q. Now, tell us one particular piece of this land with reference to which in placing a value upon it you took into consideration its availability for reservoir purposes or for water production?

“A. I cannot mention to you one piece of land, but I will say this, that I did take into consideration as far as I possibly could, every element of value that I could find to be connected

with the land, and I concluded that the prices that I put upon the land and the market value that I arrived at was its value for all purposes."

Now, I ask your Honor in all candor would a witness who was bent upon telling the truth have made an answer of that kind?

(2401-2) "Q. Is that land not worth twice as much at least for reservoir purposes—this Calaveras reservoir site—as the aggregate of the values you have placed upon it?

"A. It might be; I don't know.

"Q. Then taking into consideration the availability of these lands for reservoir purposes, is not the market value twice as much as the aggregate of the values you have placed upon the individual parcels? A. I don't know.

"Q. Don't you know, from your familiarity—

"MR. STEINHART: Q. Did you understand that question, Mr. Callaghan?

"MR. McCUTCHEN: Wait a moment; I don't think the counsel has any right to assume that, if your Honor please.

"MR. STEINHART: Will you read the question to me, Mr. Reporter?

(The question was here read by the reporter.)

"MR. McCUTCHEN: Q. What is your answer to that, Mr. Callaghan, inasmuch as the suggestion has been made by counsel?

"A. Assuming that it has a value for reservoir purposes, I don't know whether its value for reservoir purposes is twice or three times as much as my market value of it."

And now comes a portion of this testimony which I think is of very great importance.

"Q. You have been over in that community a good deal, haven't you? A. Yes, I have.

"Q. And haven't you heard, on all hands, that that property over there is much more valuable for water purposes than for any other purpose? A. Yes, I have.

"Q. And don't you recognize the soundness of that?

"A. Yes, I recognize the soundness of that.

"Q. You recognize, then, that the property is very much more valuable for water purposes than for agricultural purposes?

"A. I recognize that it is, but I would expect to buy it—

"Q. Just a moment: Answer the question 'Yes' or 'No' and then make your explanation afterwards.

(2403) "A. Yes, and I would expect to buy it for reservoir purposes or for any other purpose for the same price I put on it, and if I had the chance I could go out and prove that I could buy it, if I had the right to condemn it."

After an effort covering page after page of testimony, we finally succeeded in getting from this witness the answer which was the obvious answer to the first question put to him, that for water purposes the property was much more valuable than for the purpose for which he had valued it. And then we pass to another subject.

"Q. Now, with reference to some of these other lands, the lands on the Arroyo Honda, you placed your value upon those lands for their availability for grazing purposes, didn't you?

"A. That, together with what similar lands sold for.

"Q. For grazing purposes? A. For grazing purposes.

"Q. And the only element that you took into consideration in fixing your value upon those lands was their availability for grazing purposes?

"A. Yes, sir. I didn't consider that they had any other value. That was the highest use.

"Q. Now, haven't you, from the start, in the course of your examination, regarded those lands on Arroyo Honda as much more available and much more valuable for their production of water than for any use that could be made of them for grazing purposes?

"MR. STEINHART: I don't like to object to this form of questioning, Mr. McCutchen; we have not put Mr. Callaghan on as a water expert, and we have not put him on as a reservoir ex-

pert. You have started in to qualify him as a reservoir expert, and now you are seeking to impeach him as a reservoir expert and now, inasmuch as he has given you one answer, you are trying to prove by him that the land is worth more for water purposes than for land purposes. He doesn't know anything about it. We object to the question as immaterial, irrelevant and incompetent,——

“MR. McCUTCHEN: And on the ground that he is not competent to answer it?

“MR. STEINHART: He is absolutely incompetent to testify as a water expert. We have never claimed that he was.

(2404) “MR. OLNEY: Then why doesn't he say so, and why does he say he included it?

“MR. STEINHART: He didn't say that.

“MR. McCUTCHEN: I submit, if your Honor please, that this discussion is not proper.

“THE MASTER: No, I don't think the discussion is proper. I think the objection should be overruled, in view of the previous testimony.

“MR. SEARLS: I suggest that counsel make Mr. Callaghan his own witness, if he wants to question him on these things.

“MR. STEINHART: We don't consider Mr. Callaghan's testimony of any value, and have not considered it of any value, so far as the value of water rights is concerned.

“THE MASTER: I think the cross-examination is proper.

“MR. McCUTCHEN: Please read the question, Mr. Reporter. (Question read by the Reporter.)

“A. In a general way, yes, I did, but I am not an expert on water propositions. That is what the object of Mr. Olney's suggestion was. I don't claim to be a hydraulic engineer, or an expert on water production; but those elements all were considered by me, and had their influence in making my valuations; but I could not, because of my lack of knowledge of hydraulic engineering and the production of water—I had no way of arriving at a

value, and hence I had to place a value on those lands for their uses for agricultural purposes.

“Q. Why, then, did you tell us a while ago that you had taken into consideration the availability of this Calaveras property for reservoir purposes?

“A. Because I considered that the market value is the value for all purposes.

(2405) “Q. Now going back to the Arroyo Honda lands, Mr. Callaghan, you say you do realize and recognize that they are much more valuable for water production than for grazing purposes?

“A. No, I did not say that. I say they may have a higher value for water purposes, but I don't know that value. I would expect to acquire whatever value they had for water purposes in the prices that I have put upon them.

“Q. That is to say, you would expect to acquire whatever value they had for water purposes by considering the land for some other purpose and not for water purposes, would you?

“A. By considering the market value.

“Q. And you get at the market value of these particular lands by considering their usefulness for grazing purposes?

“A. Their usefulness for grazing purposes and what similar lands would sell for in similar localities.

“Q. You say that you are not a hydraulic engineer and that therefore you are not able to determine the value of these properties for water purposes; that is correct, is it not?

“A. That is correct. I would have to know all about the cost of producing the water, the cost of piping it, the prices for which it would sell, the available market, the distance to transport it, and so forth; I do not claim to know all those things but I do know the value of land.

“Q. Inasmuch as you have said that these Arroyo Honda lands may be more valuable for water production than for grazing purposes, don't you admit that you are unable to determine the mar-

ket value of that property because of your inability to consider the value of one element for which they are available?

"A. I do not. I consider that I could go out there and buy this land for the prices I have put upon them, and after I purchased them and acquired them I could turn around and use them (2406) for any purpose under Heaven I wanted to use them for.

"Q. Now, supposing the man from whom you were buying them knew as much about their availability for water purposes as you did, what right have you to assume that you could buy them at their value for grazing purposes.

"A. The Spring Valley Water Company bought a lot of these lands for less money than I have put upon them; that is an evidence that those lands were bought with that object in view.

"MR. McCUTCHEN: Will you repeat the question, Mr. Reporter?

"MR. STEINHART: I think that is an answer.

"THE MASTER: Yes, I think that is an answer.

"MR. McCUTCHEN: Q. If in determining the market value of those Arroyo Honda lands their availability for water production had been taken into consideration, is it not quite likely that that market value would have been very much in excess of the value which you have placed upon those lands?

"A. No, I don't think so.

"Q. Would it have been in excess at all of the market value which you have placed upon them?

"A. That would depend upon certain conditions.

"Q. With which you are not familiar?

"A. With which I am very familiar.

"Q. What are they, for instance?

"A. The anxiety of the owner to sell or not to sell, or his desire to keep and maintain a range where he was getting a good income from his investment. If you found an owner in that condition and he was satisfied with his holding, doing very well with it, and not desirous of selling, and had to acquire that land

from that owner, the chances are you would have to pay him more for it than if you found an owner who was anxious to sell. So that the conditions surrounding (2407) the ownership would to a certain extent determine the values you would have to pay for those lands if you had to acquire them for water purposes.

“Q. Now, Mr. Callaghan, won't you listen to my question: if the availability of those Arroyo Honda lands for water production had been taken into consideration might it not well be that their market value so determined would be in excess of the market value which you have given?

“A. Yes, the owner of those lands might, if he found out that the prospective purchaser had to have those lands hold them up at a stiffer figure than I have put on them.

“Q. I am not speaking of his ability to hold up a purchaser; I am speaking of the availability of the lands for a particular purpose.

“MR. STEINHART: Do you assume they were not known to be available for that purpose?

“MR. McCUTCHEN: I am not assuming anything about that.

“Q. Assuming now that the lands are available for water production—and you say you have not taken that into consideration—might it not well be if that availability were considered the market value of those lands would be in excess of the market value which you have placed upon them?

“A. Would be considered by whom, the seller or the buyer?

“Q. By both, or either?

“A. Yes; if those conditions existed and those considerations were assumed by the buyer or by the seller it might very well be that a prospective purchaser would pay more for those lands than I have put upon some of them.

“Q. If the buyer and a purchaser both realized the availability of those Arroyo Honda lands for water production and they desired to arrive at the true market value having (2408) that availability in mind is it not quite probable that the market value

would be greater than the market value which you have placed upon those parcels. A. If I was the prospective—

“Q. Answer that ‘Yes’ or ‘No.’

“A. Yes, but if I was the prospective purchaser of those lands with the State of California behind me and the law behind me I would get them for the price I put upon them and without any further cost.

(2410) “Q. In determining market value, assuming that the highest use to which these properties can be put is the production of water, you excluded that use from your consideration in determining their value, did you not?

“A. No, I did not. I included that use in my market value, but I don’t know whether the present owner can use them to a higher advantage without having any knowledge of engineering; that is a matter to be determined by the owner.

“Q. If you say that you determined the value of these properties for grazing purposes only how can you say that you took into consideration their availability for water production?

“A. I claim that my appraisal of these properties for pasturage purposes only, if you will—which I did not appraise them for—included also the land upon which that pasturage grew, and every item of value connected with it in every way, shape, manner and form. I think I did. That was my intention anyhow. It is my candid opinion that I did include everything in that land clear down to the bottom and up to the sky above.”

Now, within a few minutes after that answer was made, we turned the witness over for redirect examination; it was late in the afternoon; among the questions which were asked him on redirect in the afternoon was this one—and before calling attention to it I will state to your Honor the evident purpose of it. You will recall that a number of purchases were made in the Calaveras region in 1911, and evidently Mr. Steinhart wanted to be in a position to argue that the men who sold to the Spring Valley Water Company in 1911 knew the purpose for which the

company wanted the property, and hence it was fair to assume, or would be fair to assume that that was taken into consideration by the seller, and so he said to Mr. Callaghan, on page 2413:

“Do you know whether or not in 1911 it was generally known that the Spring Valley Water Company intended to and was going to use Calaveras Valley as a reservoir site?”

The witness did not hesitate a second; he said “Yes.” Now, he is not shown to have had any familiarity with Calaveras in 1911. This was his answer:

“A. It was general knowledge at that time that the Spring Valley Water Company was going to use Calaveras as a reservoir site.”

Shortly after that answer was made we adjourned. The next morning, when the session was resumed, Mr. Steinhart asked this question:

(2425) “Q. Mr. Callaghan, I asked you yesterday whether you intended to say that the Calaveras lands or the Arroyo lands were worth more for water purposes than otherwise. Looking over the transcript, my attention is called to the fact that I forgot to ask you whether or not you intended to say that the San Antonio lands were worth more for water purposes than otherwise. A. I did not.

“Q. Did you intend to say that any of the Spring Valley lands were worth more for water purposes than otherwise?

“A. I did not.

“Q. Now, Mr. Callaghan, I want to ask you about these questions and answers that you gave. The question was asked you:

“‘Q. Haven’t you heard on all hands that that property over there is much more valuable for water purposes than (2426) for any other purpose? A. Yes, I have.’

“Q. As a matter of fact, Mr. Callaghan, did you ever hear any discussion at all as to whether the property is worth more for water purposes than for other purposes?

“A. I did not hear any discussion of any kind.

"Q. Did you ever have any discussion as to that point?

"A. I did not."

The day before, when it was necessary to prove that it was a matter of common knowledge, that is to say, common knowledge in 1911 that the Spring Valley Water Company was going to use Calaveras as a reservoir site, Mr. Callaghan stated that that was common knowledge.

"Q. Did you ever hear any rumors as to that point?

"A. I did not.

"Q. Do you know as to any common report as to that point?

"A. I never heard any discussion as to value for water purposes or for any other purpose.

"Q. By that you mean as compared with any other purpose?

"A. As compared with any other purpose.

"MR. McCUTCHEN: I submit that that is not an answer to the question.

"THE MASTER: No, it is not an answer to the question.

"MR. STEINHART: Q. Do you know whether or not there is any common rumor as to that point? A. I do not.

"Q. The question was then asked you: Q. And don't you recognize the soundness of that?' You said 'Yes,' and then you proceeded to state that you thought you could get the land for what you valued it at. Did you mean to say at that time that you recognized the soundness of the idea that that land is more valuable for water purposes than for other purposes?

"MR. McCUTCHEN: I object to that method of redirect examination. I submit that the witness should be asked with reference to the availability of the property for reservoir purposes, or its value for that purpose, rather than that he should state what he intended to say. I think it is a vicious method of examination.

(2427) "MR. SEARLS: Has he not a right to be asked whether he wishes that answer to stand as his answer?

"MR. McCUTCHEN: No. I think you can put the question to

him again if you wish. Whether he wishes the answer to stand or not, is entirely irrelevant.

“THE MASTER: I think it would be better to ask the question direct.

“MR. STEINHART: Q. I will ask you the question direct. The question was asked you: ‘Haven’t you heard on all hands that the property over there is much more valuable for water purposes than for any other purpose?’ Then the question was asked, ‘Don’t you recognize the soundness of that?’ Now, what is your answer to that?

“A. I did not intend to answer that question that way.

“Q. What way? A. That I recognized the soundness of that.

“MR. McCUTCHEN: What page of the record is that on, Mr. Steinhart?

“MR. STEINHART: 2402.

“THE WITNESS: I do not desire that answer to stand, Mr. Steinhart; it was not my intention to answer the question that way.

“Q. Why did you answer it that way?

“A. Well, Mr. McCutchen must have got me rattled at that time; he was asking for a ‘Yes’ or ‘No’ answer to all his questions.”

Now, in anticipation of that, I called your Honor’s attention to the fact that these were not “Yes” or “No” questions, any one of them; on the contrary, the witness stated in answer to three several questions, “Yes, I have”—that is to say, haven’t you heard it was common rumor over there, etc., and he answered “Yes, I have.” And then to the next question, “Don’t you recognize the soundness of that,” his answer was “Yes, I recognize the soundness of that”; and to a third question he made the same answer, in substance, but not with the word “Yes.”

Later on he said (2492):

“I never heard any discussion of the matter [i. e. the value of these Spring Valley properties on account of their water pro-

duction], but it was always assumed that the properties were available for water purposes on account of the fact that Spring Valley owned them and was improving them."

Now, bear in mind his statement that it was common knowledge in 1911 that the Spring Valley Water Company was acquiring these lands for water purposes:

"I don't remember ever having a discussion with anybody in my life about their availability, or their difference in value between the value for water purposes and the value for agricultural and pasturage purposes."

When Callaghan made the answers that it was common rumor over there that the most available use to which that property could be put was as a reservoir, and that he recognized the soundness of that, he was stating the obvious truth. It is not within the possibilities that any man of his keen intelligence could have passed the time which he passed in that country, could have gone there when the work of constructing that dam was in progress, could have been upon that dam site and contemplated that country without having concluded beyond the possibility of doubt that the most valuable use to which the property could be put was the use to which the Spring Valley Company intended to put it. And it is charitable to say that when he made those answers on redirect examination he did so because he thought that the exigencies of the defendants' case demanded it; there is no other possible explanation to be made of it, because when he made those answers on redirect examination he knew they were untrue. It is not worth while talking about the pitiable spectacle that was presented when the witness was compelled to swallow the answers made on cross-examination. I submit that a witness who will make that sort of a record will not be particular about giving his inmost thoughts with reference to the value of property which he is appraising and will not be particular about cutting the corners if he thinks it in the interest of the side that calls him.

I propose to take up now——

THE MASTER: Before going to a new subject, Mr. McCutchen, will you recall to me the basis on which Gale valued these lands? Did he consider the availability for water purposes?

MR. McCUTCHEN: He said he knew nothing about the value of the land for water purposes, that it was impossible for him to express an opinion on the value of the land for water purposes.

THE MASTER: The value he assigned was value for agricultural and pasturage purposes, and the like.

MR. McCUTCHEN: Yes, sir.

THE MASTER: That was my recollection of it.

Callaghan's Basis of Appraisement.

MR. McCUTCHEN: Now I propose to take up portions of the record which I think throw some light upon Callaghan's ability to make a fair appraisement of these lands, and upon the fairness or lack of fairness which I think characterized his work.

At page 1908 he said:

"I approached this subject with an open mind; I talked to everybody in regard to the values of land in the locations where I was working; sometimes the party I talked to knew what I was doing and again they did not; I was determined that no injustice should be done to anybody, and I was taking everybody else's opinion of the matter and weighing it carefully to see whether I was right or wrong in the matter; I would possibly get a wrong impression, that I was too low on a certain piece of land, and I would raise it, and I would get an impression again I was too high, and I would go down a little bit on it. I was careful in finding out the opinions of everyone around and finding what they would pay, men who had had a success in life, were wealthy, and knew the value of land and knew what was produced on them, I talked with them about it, and that might make me change my opinion; I might go on the ground again and see something I did not see before that might change my opinion, either to raise it or lower it.

(1909) "THE MASTER: Q. Did you make your valuations

in conjunction with other witnesses for the city?

"A. Yes, Mr. Parsons was along nearly all the time.

"Q. You consulted with him?

"A. I consulted with him about it; we did not agree always upon prices, but we did agree in the descriptions mostly; his prices and mine do not agree."

I have called your Honor's attention to the fact that they agreed to within less than 1% on 49,000 acres of land.

"MR. McCUTCHEN: Q. How much experience have you had in buying and selling real estate?

"A. I have sold several parcels of real estate around Livermore; I have bought several parcels of real estate around Livermore.

"Q. In value, what would the pieces you have bought and sold aggregate, or rather in price?

"MR. SEARLS: Over how long a period?

"MR. McCUTCHEN: During his entire life.

"MR. SEARLS: Including lands he bought for others as well as for himself?

"MR. McCUTCHEN: That is what I am talking about.

"A. Probably \$150,000 to \$200,000.

"Q. Covering what period?

"A. All the periods since I first bought any land.

"Q. How long ago was that? A. 16 or 17 years ago.

"Q. You were a real estate agent, I understand, for 6 years?

"A. It was a side line with me all the time.

"Q. As an agent what is the aggregate of the lands sold or purchased by you? A. In acreage?

"Q. No, in value, in price? A. I would say about \$150,000 to \$200,000, somewhere around there, I would think.

"Q. During the 6 years that you were an agent?

"A. During the 6 years it would not amount to that much, I think.

(1910) "Q. Would it amount to \$50,000? A. Yes, it would.

"Q. What was the largest individual sale?

"A. About 320 acres.

"Q. Where was that? A. North of Livermore.

"Q. What was the price? A. \$42.50 an acre.

"Q. In all your experience as a real estate agent that was the largest transaction you ever conducted?

"A. The largest acreage, yes.

"Q. And the largest in money, was it not?

"A. Oh, no; I had as high as ten thousand or twelve thousand dollar sales.

"Q. What land was that? A. I sold for Mr. Herman Murphy the land Jimmie Gallagher is living on now.

"Q. When was that? A. That was in 1905 or 1906, I think; about there sometime.

"Q. Where was that? A. East of Livermore.

"Q. How far east? A. About 3 miles.

"Q. What other sales while you were an agent, did you make?

"A. Well, I sold lots in town, several of them.

"Q. In the town of Livermore? A. Yes.

"Q. Did you sell any farming lands other than those you have told us of? A. I sold smaller acreage in farming lands, yes.

"Q. Where? A. Around Livermore.

"Q. Anywhere else? A. Not anywhere else that I can remember.

"Q. Did you ever own any lands outside of Livermore and its vicinity? A. No, I did not.

"Q. Did you ever have charge of any land outside of Livermore and its vicinity? A. No.

"Q. Aside then from the inquiry you have made, what opportunities have you had to know the value of properties in this section in which you have valued property?

"A. Well, I was working in the right-of-way department for (1911) the Western Pacific and got familiar with land values

there; in my business, in the real estate business, I kept in touch with land values, and since that time, pretty closely.

“Q. Where? A. And in my business as a notary public in Livermore, I had a lot of transactions relating to land going through the office, and I always took occasion to inquire in regard to the details of the purchase and the price paid.

“Q. I have asked you outside of inquiry. Outside of inquiry made by you what opportunities have you had to learn the valuation of properties in the sections in which you have valued these properties?

“A. I had opportunities to find out values in Niles Canyon by negotiating for the purchase of a piece of land from Mr. Fusier for right of way for a county road.

“Q. What did you pay him by the way?

“A. We compromised the matter and appointed three men to settle it, and they settled it amongst themselves, and I do not remember what price Mr. Fusier got in the end.

“Q. You have no recollection about that whatever?”——

We were curious to know that, because Mr. Callaghan had put a valuation of \$100 an acre on this land of the Spring Valley Water Company; he said previously, “I had opportunities to find out values in Niles Canyon by negotiating with Mr. Fusier for a county road.” Now, listen to this answer:

“A. No, I could not tell you exactly what price Mr. Fusier got for the land, but I negotiated for the properties and put it through the arbitration.

“Q. That is the only experience you have had that enables you to ascertain the value of lands in Niles Canyon?

“A. That is the only land I dealt with in Niles Canyon.

“Q. Have you not any recollection whatever about what was paid to Mr. Fusier as a result of that arbitration?

“A. No, I have not.

“Q. Was it \$750 an acre? A. It may have been, I don’t remember; I have forgotten all about it.

"Q. Did you use that information to enable you to fix the value of \$100 an acre on lands in the same locality?

"A. No, I did not, because the lands that were taken from (1912) Mr. Fusier in that case were through his orchard there; it cuts by the house, where the house was, pretty badly; it was a very awkward proposition to put a road there on a small tract like Mr. Fusier had.

"Q. Now, then, outside of inquiry what experience have you had to enable you to fix the value of the San Antonio lands, Calaveras lands and Pleasanton lands?

"A. I know what those lands produce; I am in touch with the farmers who live on them; I keep the accounts for several people on farms of similar type of land in Livermore Valley, I know the prices of the produce; I know the amount of money that can be made from the operations conducted on those lands, similar types of land; I have been in active business in the hay and warehouse business, in the fire insurance business, been in association with these people and talking with them and find out their affairs and what they are doing, and I think it gives me a pretty good idea as to the value of the lands, with my knowledge of what the lands will produce."

Now, that question was general, and the answer stated just what his experience had been that enabled him to fix a value upon these lands. Your Honor will find later on, in the redirect examination, that he says, "Why, of course I took into consideration what lands in the vicinity sold for."

"Q. To what lands do you refer now when you say that you have been agent for farmers and have kept their books? Do you refer to Pleasanton lands? A. No, I do not.

"Q. Do you refer to San Antonio lands?

"A. Lands of a similar type to the San Antonio lands.

"Q. What lands similar to the Pleasanton lands are owned by anyone whose books you have kept?

"A. I did not say that I was keeping any lands particularly,

but they would come in for me to figure up their crops for them.

“Q. Who living in Pleasanton has ever gone into you to figure his crop up for him? A. Not in Pleasanton, but in Livermore.

(1913) “MR. STEINHART: Do you mean to imply he said from Pleasanton?

“MR. McCUTCHEN: Q. Who owning land similar to the Pleasanton land has ever gone in to you to figure his crops or keep his books or do anything about his business?

“A. I was not talking about the Pleasanton lands; I was talking about lands similar in type to the San Antonio lands.

“Q. Did anyone owning lands similar to the Pleasanton lands ever go to consult you about any phase or branch of his business?

“A. No.

“Q. Did anyone owning lands similar to the Pleasanton lands ever communicate to you any information regarding the crops derived from the lands?

“A. I bought grain through the Pleasanton country last season for Sinsheimer & Company, and I know the kind of crops they raise there; I know the people who live there; I have seen the results of their farming operations.

“Q. Do you consider that that qualifies you to express an opinion as to the value of the Pleasanton lands?

“A. I certainly think it does.

“Q. You think it does? A. Yes.

“Q. Now then, with reference to San Antonio lands, from what person for whom you were acting did you get any information relative to those lands? A. I talked with Mr. Freitas.

“Q. Were you acting for him? A. No, I was not.

“Q. Were you keeping his books? A. I was not.

“Q. Was he consulting you? A. No.

“Q. About his business? A. No.

“Q. Well, I asked you whether any person farming these lands or having anything to do with them consulted you with reference

to his business or asked you to keep his books or give him any advice?

(1914) "A. No, I can't say they did, any person in the San Antonio Valley.

"Q. Did any person in Calaveras that owned or rented any land in Calaveras ask you to do that?

"A. No. My reference to that matter was that people farming and operating lands similar to these lands, I knew what they were doing, and the results that they were obtaining; and I cannot see how any different results can be obtained from the operating of the Calaveras lands or the operating of the San Antonio Valley lands.

"Q. Is that the way you ascertain market value, and is it to that sort of market value that you have testified here?

"A. I also——

"Q. Answer my question and then you can make your explanation.

"MR. STEINHART: I suggest that the witness can answer in the way he sees fit, if your Honor please.

"THE MASTER: That calls for 'Yes' or 'No.'

"A. That is an involved question; I will answer it 'Yes' or 'No' if I may be allowed to explain it.

"THE MASTER: Q. Answer it 'Yes' or 'No' and then go ahead and explain.

"A. I will answer that question by saying 'No.' I have found out by sales of similar lands what a willing buyer would pay to a willing seller for similar lands located in that vicinity.

"MR. McCUTCHEN: Q. Now then, taking that as your rule, what lands similar to the Calaveras lands, the valley land I speak of now particularly, did you find a willing seller would sell to a willing buyer for?

"A. It was a very difficult thing to find lands similar to the valley lands in the Calaveras Valley——

"Q. Then as to those lands——

“MR. STEINHART: Let him finish his answer.

(1915) “A. (continuing) In any part of California.

“MR. McCUTCHEN: Q. What then is your rule for determining the value of these valley lands?

“A. I think I answered that question to-day, that the greatest value of those valley lands was in connection with that range for the purpose of raising feed in the valley, alfalfa, if necessary, or other feed, for the purpose of topping off steers that were in good condition on the range and also for the purpose of providing feed that might be needed in a dry season which sometimes comes along; that that was the greatest value of that valley, and I think that is the greatest use it could be put to, for that purpose, and the highest value it would have for that purpose.

“Q. I did not ask you the purpose to which you would put it; I asked you for your rule or yard-stick for determining its value in dollars and cents?

“A. Well, with my knowledge of the stock business, my knowledge of the farming business that I have, I used that knowledge in arriving at what I considered a man could afford to pay for the Calaveras Valley lands, for the purpose that I said it was most highly adapted to.

“Q. Where in California to your knowledge is there any land similar to the land on the floor of Calaveras Valley which is being used as part of a stock range?

“A. Hall's Valley is somewhat similar.

“Q. You compare Hall's Valley to Calaveras Valley?

“A. Somewhat similar, I say.

“Q. Is the land in Hall's Valley as fertile as the land in Calaveras Valley? A. No, it is not.

“Q. Is Hall's Valley colder than Calaveras Valley?

“A: I should think it was.

(1916) “Q. Then do you say that the land on the floor of Hall's Valley is comparable to the land on the floor of Calaveras Valley?

"A. Well, in the manner the same as I have indicated that Calaveras Valley could be used, for the purpose of raising feed.

"Q. I ask you to tell me where there was any land like the land on the floor of Calaveras Valley that formed part of a stock range within your knowledge?

"A. There are several places where a certain similarity exists in land of a similar kind but not land exactly like the land in Calaveras Valley.

"Q. Where are these? A. Take the Corral Hollow country.

"Q. Is there any valley land there?

"A. Yes, there is considerable valley land through there.

"Q. What is that worth per acre?

"A. On Section 7 and Section 36.

"Q. What is that worth per acre? A. Connolly purchased—

"Q. I am asking you the market value of it per acre. Let me ask you, are you using that as a guide to determine the value of the land on the floor of the Calaveras Valley?

"A. I am trying to find a similar condition to what you asked in California.

"Q. Is it the same? A. It is not exactly similar.

"Q. I asked you where you find land like that on the floor of Calaveras Valley, I mean with the same soil conditions, that forms part of a stock range?

"A. I do not call to mind any particular spot just exactly similar, because it is hard to get a spot that is exactly similar to that place.

"Q. How does all of that information enable you to say that (1917) this land is worth \$125 an acre and only \$125 an acre?

"A. My knowledge of what the land would produce.

"Q. What will it produce?"

Now, just remember that this is the floor of that valley, upon which there are two thrifty prune orchards, which any man who looks may see.

"A. It will produce very good hay and very good grain.

"Q. How do you know it will produce grain?

"A. I saw grain there.

"Q. On the floor of the valley? A. Carson had grain there.

"Q. When?

"A. I believe there was some grain there—I can't remember whether it was two or three years ago that there was some grain there.

"Q. How long were you there at that time?

"A. I passed through there, that is all.

"Q. Do you know whether it was a good crop or a poor one?

"A. A fairly good crop."

I don't know what this witness would do if the word "fairly" and the word "fair" were taken out of his vocabulary.

"Q. What do you mean by a fairly good crop?

"A. Well, an average crop for that year, I considered it.

"Q. What was an average crop for that year?

"A. Well, an average crop of wheat in Calaveras Valley——

"Q. I ask you what was the average crop for that year?

"A. Do you mean all over California?

"Q. No, I am talking about the crop that you saw there; you said it was an average crop for that year.

"MR. STEINHART: What do you mean, that that was an average crop for that year, compared with those lands?

"MR. McCUTCHEN: I am taking the witness's language.

"MR. STEINHART: I submit that the question is not intelligible.

"MR. McCUTCHEN: Q. What was the crop that you saw there, what did that yield per acre?

"A. I think from a casual examination that I made it would yield about 10 to 15 sacks of barley.

(1918) "Q. 10 to 15? A. Yes.

"Q. There is a great deal of difference between 10 and 15, isn't there? A. Without making a careful examination of the crop from passing along and forming an opinion.

"Q. Do you know whether it yielded 10 sacks that year?

"A. I don't know exactly whether it did or not.

"Q. Do you know whether it yielded 8?

"A. Yes, I would say it would go over 8 sacks, the crop I saw there.

"Q. What other crops have you seen growing upon the floor of Calaveras Valley? A. A hay crop.

"Q. When? A. Last year.

"Q. How much did it yield? A. I would say some portions of that plot would yield a ton and a half to 2 tons last year.

"Q. One and a half to 2 tons? A. Yes.

"Q. Did you ever see that portion in crop before?

"A. Not that I can recollect.

"Q. Have you ever seen any crops in Calaveras Valley except the barley crop that you have referred to and the hay crop you have just referred to?

"A. I think that was about all the crops I saw in Calaveras Valley.

"Q. Now then, so far as your knowledge goes, that is all you know about the productivity of the soil in the bottom of the valley?"

This will become somewhat interesting later on when he attempts to make a comparison between the productivity of the soil in the Calaveras Valley and in Pleasanton.

"A. Mr. McCutchen, I know enough about land to go over it and look at it, to know something more than that about its productivity.

"Q. What more do you know?

"A. I have watched the growth of the crops on the different types of soil for twenty years, and I should certainly have learned something about the productivity of soil."

He should have learned something about the productivity of that soil. When he was asked whether the attempt to grow fruit in the Livermore region had been abandoned, he said "Yes"; and

when he was asked the reason—and this from a man who said he could tell the value of land by looking at it—he said he didn't know whether it was due to climatic conditions or to deficiencies in the soil. And that, your Honor, about land in the neighborhood in which he was born and in which he was reared and in which every piece of property he had ever dealt in lay. And he didn't know enough about that soil to know whether it was deficiencies in it that made it impossible to raise fruit there.

“Q. How does the productivity of that soil compare with the productivity of the lands about Pleasanton? (1919)

“A. I do not consider it as productive as lands about Pleasanton.

“Q. How does it compare according to your information?”

Now, think of this answer by an expert who fixes the value of land by what it will produce:

“A. It is not half as productive.

“Q. Not half as productive?

“A. As some of the best lands around Pleasanton.

“Q. Do you know that of your own knowledge? A. I do.

“Q. How if you have never seen crops produced there except twice do you know that of your own knowledge?

“A. I know it from the type of soil that is around Pleasanton and the type of soil that is around Calaveras, the difference; the natural difference that there would be in the production of the yield in both places.

“Q. Do you mean to say that the soil of Pleasanton will produce twice as much per acre as the soil of Calaveras Valley, that is to say, that portion of Calaveras Valley on the floor of the valley? A. Yes, there is some of the best soil that I know of in California right around Pleasanton.

“Q. Do you mean by that the soil in Calaveras Valley is not exceedingly good soil?

“A. I do not, no. It is fairly good soil, of that type of soil, but not of the rich deep soil that is around Pleasanton.”

The only thing we know about the depth of soil in this case, I think, is a statement by Mr. Means to the effect that he took an auger and bored down six feet and found soil all the way. I think that is the only evidence of the depth of the soil in Calaveras Valley.

“Q. What is the type of soil in Calaveras Valley?

“A. It varies from light gravelly soil to a black loamy soil.

“Q. How was it put there according to your impression?

“A. Well, a portion of it came from the south from this slope up toward that vineyard you are talking about; a portion of the soil came from the eastern slopes of the valley and from that side and the best soil in Calaveras Valley (1920) came from the western slopes.

“Q. The best soil came from the western slopes? A. Yes.

“Q. What is the highest value you have placed upon any land in the floor of Calaveras Valley? A. I think \$150 is my highest value on the best land in Calaveras Valley.

“Q. What was your valuation on the southerly prune orchard leaving the trees out of consideration?

“A. I think I valued that piece, the southerly prune orchard as a whole.

“Q. You did. You valued it at \$400 as I remember. Is that your recollection? A. That is the prune orchard towards the dam, Mr. McCutchen, that I valued at \$400.

“Q. What was your valuation on the southerly prune orchard?

“A. I think I did not segregate that prune orchard from the balance of the tract of land.

“Q. What value did you put upon that as a whole?

“A. I think it is \$125.

“Q. \$125? A. Yes.

“Q. That southerly prune orchard lies right against the easterly hills, does it not? A. Yes.

“Q. That is to say, it is to the east of the creek?

“A. Yes, it is east of the creek.

"Q. Is that good soil? A. Very good soil there, yes.

"Q. Is that black soil? A. Yes.

"Q. You call that black loam? A. Yes.

"Q. Where did that come from?

"A. It came out of that ravine north of Parks' house.

"Q. What is that you assume can be grown upon the Pleasanton lands that cannot be grown upon the lands in the floor of the Calaveras Valley (1921)?

"A. You can grow most anything in the Calaveras Valley that you can grow at Pleasanton, but not so successfully, not with as good results.

"Q. Where would they fall off?

"A. I don't think you would have very much success with strawberries in Calaveras Valley, and I know you can produce excellent strawberries on some of that rich land around Pleasanton."

I will call your attention later to a question put to him as to what would be a good yield of strawberries at Pleasanton, and he admitted he knew nothing about it.

"Q. Is that on account of soil conditions or on account of climatic conditions? A. Both, partially both.

"Q. Do you mean to say that in your opinion there is any reason so far as soil conditions are concerned why strawberries could not be grown in Calaveras Valley?

"A. I think there are areas in Calaveras Valley that would produce strawberries but they would not produce as heavy a crop of strawberries as you could get around the rich land of Pleasanton.

"Q. How do you know?

"A. My knowledge of the land and my judgment of the soil.

"Q. You described this as black loam, did you not, much of it?

"A. Some of it is black loam.

"MR. STEINHART: He did not describe much of it, did he?

"MR. McCUTCHEN: Q. I will ask you now, tell us how much black loam there is on the floor of the valley?

“A. That would be a very difficult thing to do.”

Would it? We went over that valley pretty well. We crossed it in two places. We saw black loam everywhere. We would not have any respect for the statement of an expert who told us that black loam was not the prevailing soil on the floor of that valley. We saw that southerly prune orchard. The ground had been turned over. We saw that it was a black, friable soil. We would not have any respect for the statement of anybody who would describe it as anything else. And it was easterly of the creek, and he says that the best wash comes from the westerly hills.

“Q. Approximately. I understood that you stated that there was a good deal of black loam, but counsel does not think I am correct in that.

“A. No. There is not so very much black loam; it is dark loam that comes out of Pomeroy Creek, where the old prune orchard is; that is dark loam; there is some dark loam around at the other orchard over there, and there are some (1922) areas of dark loam that is in other parts of the valley; it is in different places, not all together.

“Q. What is it where the corn patch is?

A. That is clay loam there at the corn patch.”

Your Honor was there when that corn patch was growing, and the ground was as black as your hat.

“Q. What do you mean by clay loam? A. It has not got that dark color, dark rich color to it like the land in the prune orchard has got; it is a brown-colored soil where the corn is.”

I want to remind you, to show you how glibly this witness talks about things as to which he is entirely ignorant, he stated that the land on the westerly side of Calaveras Creek was good land, was black loam, because it was the wash from the hills on the westerly side of the valley; now, here is this corn patch, right at the bottom of that westerly slope, and yet he tells you that that is not black loam; he has now shifted and, whereas, the hills on the easterly side of the valley, from which the land to the east of the

Calaveras Creek was made is poor soil, light soil, he now tells you that this patch of ground where the corn is is not as good as the land on the easterly side of the creek that came from the poor hills. Now, I don't attach any importance to that, at all, except this, that this witness, when he talks about land, is continually dealing with a subject upon which he is ignorant, and I think I will demonstrate that to a certainty before I get through.

"Q. How about the soil along the road across the valley?

"A. That varies too in different localities along the road; it does not continue the same kind of soil after you turn into the road until you get to the prune orchard; there are different stratas there of soil.

"Q. Isn't it fair to say that when you make the statement that Calaveras Valley lands will not produce what the Pleasanton lands will produce that you are not making that statement on any information that you yourself have derived from actual experience?

"A. I am making that statement——

"Q. Answer the question 'Yes' or 'No' and then make your explanation. It is not based on any experience, is it? A. No.

"Q. Either with Calaveras or with Pleasanton?

"A. It is not based on any personal experience of mine either of Calaveras or Pleasanton, but it is based upon my knowledge of the soil conditions and what it will grow in both places.

"Q. What opportunities have you had to observe during the period of years what can be done with the lands on the floor of Calaveras Valley. A. The opportunities that I have had are going over the land and looking at it.

"Q. You know the Calaveras Valley has been practically dead for twenty years, don't you?

(1923) "A. Well, I don't know what you mean by practically dead.

"Q. You know that there is nothing like intensified farming there and nobody has any opportunity to carry on such farming, don't you—don't you know that? A. Yes.

"Q. You do know on the other hand that there has been intensified farming practiced around Pleasanton, don't you?

"A. Yes.

"Q. Well now, what opportunities have you had to know what the one piece of land will produce and what the other may produce under the same circumstances?

"A. Well, I say again, my knowledge of the soil in Calaveras Valley leads me to believe, and I believe that I am correct in the statement, that the soil of Calaveras Valley will not produce to the acre as much of any crop that can be planted in it as will be produced on the same acre of deep rich loamy land around Pleasanton.

"Q. You have said, as I understood you, that that land around Pleasanton was some of the finest land in California; is that right? A. I consider that very fine land, Mr. McCutchen.

"Q. Where is there any finer land according to your experience?

"MR. SEARLS: What lands around Pleasanton are you speaking of?

"MR. McCUTCHEN: The land owned by the Spring Valley Company.

"A. I am speaking of the land south of the County Road 2000.

"THE MASTER: He wants to know where there is any other land that is as good or better.

"A. Are there any as good or better—I suppose, I don't know all of California, but I suppose there is some as good land as around Pleasanton.

"MR. McCUTCHEN: Q. If there is, you don't know of it?

"A. I think some land along Alameda Creek, down near Decoto, between Niles and Decoto, I think that land will (1924) compare very favorably with Pleasanton lands.

"Q. Mr. Callaghan, you say you have had experience enough with the Pleasanton lands to be able to put a value upon them. Have you ever had a similar experience with any other lands in

California as good as the Pleasanton lands?

“A. I know the other lands in a general way, I have been over them, and watched the growth of crops on them, and what they produced.

“Q. Do they produce any better crops than the Pleasanton lands?

“A. About the same kind of crops are produced around Niles and down there by the California Nursery and down at Decoto and around Centerville.

“Q. It is fair to say according to your experience there is no better land than the Pleasanton lands?

“A. It is fair to say from my experience that there is no better lands in California than the Pleasanton lands?

“Q. Yes. A. No, it is not. I say there are lands in California equally as good as the Pleasanton lands, in this district that I have just mentioned.

“THE MASTER: Q. He says better, so far as you know?

“A. That particular piece of land that I know of below Pleasanton, I do not think there is any better land anywhere.

“MR. SEARLS: You refer to the lands south of 2,000?

“A. Yes.”

* * * * *

(2025) (Referring to Calaveras Valley lands.)

“Q. How then are we to assume that you got at your values there?

“A. You are to assume that I get at my appraisalment of the value of this tract of land by the fact that I went over it and examined it carefully and noted the conditions on the ground, estimated the number of acres that could be cultivated, estimated the number of acres that was pasture land, and the quality of the pasture on it, and the amount of stock that it could reasonably be expected such land would carry for the year, and the amount of income that the prospective purchaser could expect to get out of the land after purchasing it. With my judgment of (2026) land

and its production and my experience in real estate I think I am perfectly competent to arrive at that opinion and to express that opinion and to put it down in figures as the appraised value of the land. That is the only way I can reason out that it is worth \$10 an acre or \$30 an acre or \$40 an acre."

On redirect examination, at page 2413, he was asked:

"Q. In placing your valuations on the lands, did you or did you not base those lands at the time you placed the valuations on the lands, on an assumed productivity of that land?"

"A. I did not wholly place my valuation upon any lands on account of its productivity, what it would produce; I also used, in arriving at my valuation, what similar lands used for similar purposes were being bought for and could be bought for in the open market."

And yet he admitted that he knew of no such lands with which he could compare the Calaveras lands or the Pleasanton lands.

Callaghan's Rule for Determining Value of Grazing Lands.

Along that same line, and for the purpose of showing what information this witness used to arrive at values, I call your Honor's attention to page 2280:

"Q. What is the value per acre of the two-thirds of T-239 which cannot be farmed? A. Between \$15 and \$20 an acre.

"Q. That is to say, it is worth that as grazing land, is it?"

"A. In connection with the land that can be farmed. Those farming propositions in there and those grazing propositions in the San Antonio are all taken in connection with the possibility that the farmer may farm a portion of the land and pasture the rest of it.

"Q. Then, if it were not to be taken in connection with the better portion of T-239, it would not be worth \$15 or \$20 an acre?"

"A. No, it would not, not taken in connection with the rest of the land.

"Q. What would it be worth in that event? A. Oh, \$10 to \$12.

“Q. That is to say, open grazing land there, if separated from the farming land, would only be worth from \$10 to \$12 an acre?

“A. That is all.

“Q. Is it good grazing land?

“A. It is fairly good grazing land, yes, sir.

“Q. What do you mean by fairly good grazing land?

“A. There is better grazing land and there is poorer grazing land than that is; it is a medium class grazing land.

“Q. You gave two grades, as I remember it, of this hill grazing land. You described one as good and the other as poor.

* * * * *

(2281) “Q. I am talking about high-grade pasture, such as the witness spoke of down on the flat. Mr. Callaghan, how did you divide grazing lands?

“A. Hill grazing lands, I divide ordinarily into two sections; one is grazing land in connection with a farming proposition, and I considered that that was more valuable than a range grazing land; then the range grazing land was in a class by itself, also.

“Q. Do you call one of those good grazing lands and the other poor? In other words, how do you subdivide it?

“A. I subdivide it this way: If that tract had no farming land on it, the pasture land area on it would be worth only \$10 an acre.

“Q. That is to say, it would not produce feed sufficient to make it worth more than \$10 an acre? A. No.

“Q. But because it happens to be next to a piece of farming land, it is worth from \$15 to \$20 an acre; in other words, it is worth from 75 to 100% more?

“A. In reasoning it out that way, it is worth more money. I won't say it is worth from 50 to 75% more, but it is worth more money taken in connection with the farming land that could be used for farming purposes in that neighborhood.

“Q. When you say that that land is worth \$10 an acre, how many acres of it do you assume would be necessary to maintain one head of cattle per year?

"A. It would take from 15 to 20 acres of those hill ranges——

"Q. I am speaking of this particular land, Mr. Callaghan.

"A. Well, of this particular land, you would have to take from 10 to 12 acres to carry a steer for a year.

"Q. 10 to 12 acres. A. Yes, sir.

"Q. And you said as to some other land, that it would require 15 to 20 acres? (2282). A. Yes, sir.

"Q. What other lands had you in mind then?

"A. Lands further south in the San Antonio, such as section 21, portions of 22 and the hill lands surrounding that country.

"Q. Do you state from your experience, in the grazing of cattle upon lands of this description that it will require 15 to 20 acres to maintain a steer per annum? A. Yes, it will."

I will show you later where the witness has said he has never had any experience in the grazing of cattle.

"MR. SEARLS: What lands are you referring to now?

"A. I am referring to the hill range lands of the San Antonio.

"MR. McCUTCHEN: Q. The hill range lands of the San Antonio. This particular tract of land, as I understand you, that is to say, the portion that is not suitable for farming, would support steers at the rate of 10 acres per steer, did you say?

"A. Yes, sir.

"Q. If the land would support cattle at the rate of one to 6 or 7 acres, what would it be worth.

"A. From \$15 to \$20 an acre.

"Q. From \$15 to \$20 an acre?

"A. That is, assuming, Mr. McCutchen, that these cattle are going to be on this range from January 1st to January 1st every year, and find their living and make their support, and get nothing hauled in to them on that land during that whole period.

"Q. Do you, as a stock man, state that that is the test?

"A. That is the test if you are going to put the test how many acres to a head are you going to apply. You must apply that test to any land and say, I will put in 50 head, or 100 head,

or 500 head for three or four months, and take them out and then leave the range for two or three months without about half the stock on it from the year before and then say that the maximum number of head on that range is the amount it will support. That is not the test."

Now, as I say, to show how glibly this witness talks about things with reference to which he really is not informed, let us go back to the previous page:

"Q. How many acres of this sort of land worth \$15 or \$20 an acre would be required to support a steer for a year?

"A. 10 to 12 acres."

Now, a few pages farther:

"Q. If the land would support cattle at the rate of one to 6 or 7 acres, what would it be worth?

"A. From \$15 to \$20 an acre."

In other words, land that would support cattle at the rate of one steer to 6 or 7 acres, would not be worth any more, according to the witness, who claims to be a practical cattle man, than land which would require 12 or 15 acres to perform the same service. Let me see if I have that right: In the one case, as I say, land of a nature that would take 10 to 12 acres to support a steer per annum is worth \$15 to \$20 an acre, and land which will support cattle at the rate of one to 6 or 7 acres is worth \$15 or \$20 an acre, according to this stock man.

(2293) "Q. Now, at the expense of repetition, Mr. Callaghan, I am going to ask you to define again your two classes of grazing land?

"A. The two classes of grazing land mentioned by me were grazing land in connection with a farm, or in connection with other land where farming operations could be carried on; and grazing land in connection with a range where it was wholly and purely a grazing proposition.

(2294) "Q. Now, supposing that the land which was wholly and purely a grazing proposition had better feed on it than the

land used in connection with other land for farming operations, which would be the more valuable grazing land?

"A. Grazing land in any location—its value is determined by the quality of it. Now, usually the grazing lands found in connection with farming lands are better grazing lands than the grazing lands found in connection with range pasture. The fact of the proximity of the farming land to the grazing land is an indication that it would be better grazing land, being further removed from the high hills.

"THE MASTER: Q. You don't answer the question there, Mr. Callaghan. You dispute the hypothesis; assuming the hypothesis, answer the question. Now, repeat the question, Mr. Reporter.

(Question read by the reporter.)

"A. Where the better pasture was.

"MR. McCUTCHEN: Q. So, the fact that the grazing land is used in connection with a farm is not a determinative factor at all, is it?

"A. It is a determinative factor, so far as my first explanation is concerned, that usually the grazing land found in connection with farming is better grazing land than the grazing land found in connection with a range.

"Q. Is that so with reference to grazing lands which you have valued in this case? A. In San Antonio Valley, yes.

"Q. And in Calaveras and Arroyo Valle? A. I don't exactly understand the question. I don't know what you mean by 'Is that so'—is what so?

"Q. You say that the grazing lands found in connection with farming lands are more valuable in San Antonio than the grazing lands not found in connection with farming land; now, I ask you whether that same rule (2295) applies to the grazing lands in Calaveras and the Arroyo Valle?

"A. Yes, it does apply to those lands. I certainly give those

lands an added advantage in every case where they are found in connection with prospective farming land.

“Q. What was your rule in making an addition to the grazing lands under those circumstances?

“A. I had no set rule; I used my judgment in the matter.

“Q. Can you give the court any yardstick or measure by which that can be determined?

“A. I don't know that I can, further than to say that I always considered that a tract of land for farming purposes having adjoining it a tract for pasturage, that I always gave that pasturage an added value on account of its proximity to the farming land.

“Q. Suppose there were other pasture lands that were in proximity to that farming land, but not part of the particular plot that you were valuing, did you also give those grazing lands the benefit of that situation?

“A. Yes. They usually were found in proximity to similar areas of farming land. That system, or that method, I should say, prevailed and held good until the areas of pasture removed from the farming land were reached, and then I had to consider them as purely range pasture propositions.

“Q. In other words, simply because grazing lands were somewhat removed from farming lands, you did not treat them as liberally as if they had been nearer to farming lands?

“A. No, I did not.

“Q. Is there any other difference between the two than the time required for the cattle to get from the grazing land to the farming land in the one case and in the other?

“A. Yes; there is another difference: There is this difference, that a man having a farm and a piece of pasture (2296) land adjacent to it, can turn his work stock into that pasture and keep them under his eye, where if a horse gets cut with a barbed wire fence, he can attend to him and treat him, and he can see that everything is all right at all times; whereas, if he

had to take his stock away from his farm and put them in a pasture somewhere else, where it would entail a long journey to go to look at them, the chances are that his losses in his stock would be greater on account of barbed wire cuts, or horses falling into ditches, or something else occurring that probably would mean a loss to him.

“Q. Now, having stated to us two classes of grazing land what rule did you adopt to enable you to fix a value upon the different grades in those two classes?

“A. Well, I used my knowledge of grazing and stock-raising; I used my experience in land values throughout the locality, and the surrounding localities, and I used my knowledge of sales of similar property where the willing buyer met the willing purchaser and the price they paid for land of similar character in that and other localities adjoining. Those were the guiding factors in arriving at the valuation of this kind.

“Q. You told us this morning, as I understand you, that you had no experience in stock-grazing, or stock-raising.

“A. I was in the sheep business for 14 years, and I have been in touch with the stock business, both sheep and cattle, nearly all my life.

“Q. What do you mean by ‘being in touch’ with it?

“A. Well, knowing men who are engaged in the business, knowing what prices they pay, what they bought for and what they sold for, and the profits that they made. I have been in close touch with the stock business all my life.”

* * * * *

(2297) “Q. Do you think that the fact that you have grazed sheep on some of these mountain lands would enable you to tell how many acres would be required to maintain a steer for a year?

“A. Yes, I think it would; not alone the fact that I grazed sheep over these mountain ranges, but my knowledge of the cattle business and my knowledge of these ranges where they range cattle, and what number of cattle it is usually safe to put

upon a range, I think that would be sufficient to justify me in stating what I think a range would carry.”

Callaghan's Experience as a Stock Man.

And now we come to the experience of the witness as a stock man, particularly as a cattle man.

(2283) “Q. Now, I understand you to say—you claim to be a practical stock man, don't you, Mr. Callaghan? A. Yes.

“Q. Do you as a stock man say that that is the test, that is to say, the number of cattle which a range will maintain from January 1st to January 1st?

“A. That is the test as to the number of head of cattle that a range will maintain.

“Q. Now do you not know as a stock man that the common practice is to buy stock in October and to begin to market them from the range about the first of the following June and to have them all marketed by the first of August?

“A. Yes, that is the common practice, but a man cannot say after pursuing that practice that his range will carry the maximum number of head of stock that was on it during the good feed months of March, April, May and June.

“Q. You say that is the common practice, that is, the practice I have suggested to you? A. Yes, sir.

“Q. Following that practice, Mr. Callaghan, how many acres of that land would be required to carry the herd of cattle, how many acres per head? A. That will all depend on the time you take the cattle out and the time you put them in.

“Q. You have said that the common practice is for these men who have ranges to buy cattle in October and to begin to market them by the first of June and to have them all marketed by the first of August?

“A. Not to market them all, market some of them.

“Q. Is it not the practice to market them all by the first of August? A. If possible. It is hardly ever possible that a man in the stock business will have all of his cattle in condition

to market them by the first of August.

“Q. So the common practice is to hold the cattle only an average of about nine months, is it not?

(2284) “A. If it is possible to get them off, more profit can be derived in nine months.

“Q. Do you know how much more a steer would be worth if he was two years old in October, how much more he would be worth in the following June?

Now, listen to his answer: He is claiming to be a competent stock man and he is telling you the amount of feed necessary to maintain a steer for a year:

“A. No. Conditions would have to be known in order to hazard a guess as to that.

“Q. Is it not necessary to know that in order to know what this range land is worth? A. No, it is not. An experience of a number of years will be able to cover what that range land is worth.

“Q. If you don't know the difference in value of the steer when he is two years old and when he is three years old, how are you going to be able to tell the profit that would be derived by the owner of land in running cattle upon it?

“A. Your experience is—

“Q. Will you answer my question? Well, go ahead in your own way.

“A. Your experience tells you what profit you make on a certain bunch of steers or cows that you purchase, and when you put them in on a range and when you turn them off a range, it all figures up in the expenses—it figures up in the results.”

* * * * *

“Q. Counsel for the city suggests that to be perfectly fair to you I ought to suggest to you the market conditions that should obtain with reference to the questions I am putting to you. You put your own price on the cattle; we will assume now that

you buy cattle the first of October to put upon your range, what would you buy—would you buy two-year-olds? A. Yes, sir.

“Q. What would you pay for them?

“A. From \$40 to \$50 apiece.

“Q. Dependent upon what?

“A. Dependent upon the condition they were in and dependent upon how I got them picked out from the man I bought them from.

(2285) “Q. You mean you would pay so much a pound for them?

“A. No, I would not; I would buy them by the head. In buying stock cattle, it is only recently, in the last few years, that any purchase has been made of stock cattle other than by the head.

“Q. Where would you buy cattle now, if you were going to buy them by the head and not in regard to their weight?”

And now he goes to God's country again.

“A. If you wanted to go amongst the farmers of Livermore Valley, you might pick up a few head from each farmer and get them by the head.

“Q. Is that what you would do if you had a big range?

“A. It would depend upon conditions. I would possibly go down into Mexico, I would possibly go down into Arizona, or I would find some on the ranges along the San Joaquin that might be overstocked, I might do that.

“Q. You have said, Mr. Callaghan, that you might do this, do that, or do the other; how would you stock your range?

“A. I would go out and look for cattle where they were for sale, and buy them under the best conditions.

“Q. You would not buy them by the pound?

“A. No, I would not buy them by the pound; If I could get a low enough price by the pound, I would do it, but I would rather prefer to buy cattle by the head.

“Q. We will assume now that you would buy them at \$40 or \$50 a head, what will they weigh at the time you buy them?

"A. Well, good cattle, two years old, ought to weigh from 450 to 475 pounds.

"Q. And you will pay \$40 or \$50 for a two-year-old that weighed from 450 to 475 pounds?

"A. I would rather get them at 500 pounds, if I paid \$40 or \$50 for them.

"Q. And you would pay \$40 or \$50 for one that weighed 500 pounds, would you? A. Yes, sir."

Now, do you remember the testimony of Fallon, the professional cattle buyer? Mind you, that means 450 to 500 pounds for \$40 to \$50. Taking the maximum weight, it means at least 8 cents a pound, and possibly 10 cents a pound for beef on the hoof—a price that never was known to obtain. The highest price Fallon says which has ever been paid, or which is ever paid, is 7 cents a pound, and the ruling price is from $5\frac{1}{2}$ to 6 cents a pound. And this experienced cattle man, who goes upon our range to fix the value of it, based upon the profit that a cattle man or a range man would reap from it, says he would pay for a steer weighing from 450 to 500 pounds \$40 to \$50.

(2286) "Q. What would you do with him after you got him—would you take him out on the range?

"A. Yes, turn him out on the range.

"Q. And how long would you keep him there?

"A. I would keep him there until I could get him into condition to sell him, and then I would dispose of him and get some fresh stock on the range.

"Q. How soon would that be, ordinarily?

"A. In a good year, a man putting a two-year-old steer on the range in the months of November or December should have him in condition to sell by June or July.

"Q. What would he then weigh? If he weighed 500 when you got him what would he weigh then? A. Oh, 600 to 750. It varies according to the size of the animal.

"Q. Would you say that 750 would be an average?

“A. Yes, 750 would be an average.

“Q. And what would you sell him for then?

“A. Well, from \$55 to \$65, according to the condition he was in, and the kind of a steer he was.”

My recollection of the maximum price which Fallon says obtains would give, for a steer weighing 750 pounds, about \$50, possibly \$52; that is to say, if you got that high market price—which does not often obtain.

“Q. That is, you would pay \$40 or \$50 for him, and you would keep him a year and you would sell him for \$55?

“A. Yes, but you could not sell them all in a year, you will always have some on hand, and besides that, in running a range of cattle, you don’t go out and buy a clean-cut bunch of steers and put them on a range and have them turned off all together. Those are ideal conditions. Your range always has a residue of stock on it, some cows and some calves—

“Q. Now, Mr. Callaghan, if you wouldn’t deliver a lecture every time I ask you a question, we would get along more rapidly.

“MR. STEINHART: I don’t think that is proper. And I would like to bring up a matter right here while I think of it; I asked for Mr. Parks’ books. I looked them over, and I think we agree, Mr. Greene, it was pretty hard to make anything out of them, (2287) they were kept so incomplete—without any criticism on Mr. Parks; but they did show that Mr. Parks did buy his cattle by the head, and that the price he paid for them was about what Mr. Callaghan is now testifying to, about \$40 or \$50.”

* * * * *

“MR. McCUTCHEN: Let us ask Mr. Callaghan about it.

“Q. Is that the way that range owners buy, as a rule?

“A. That is generally the rule.

“Q. What range owners do you know of that buy that way?

“A. The Tesla Cattle Company and the Ryans.

“Q. Let us take them up this way: Does R. F. Morrow buy cattle that way. A. I don’t know.

“Q. Does the Dunne ranch buy cattle that way?

“A. I don’t know.

“Q. Does the San Luis ranch buy cattle that way?

“A. I don’t know.

“Q. Well, when you wanted to market the stock that weighed from 700 to 750 pounds, what would you get for the steer by the pound?

“A. That would vary under different conditions.

“Q. Under normal conditions that have prevailed within the past five or six years. A. The prices of cattle have varied all the way from $7\frac{1}{2}$ to $8\frac{1}{2}$ and 9 cents per pound.

“Q. Is not that an extraordinary price to get for cattle, and is it not a price that has never been paid, except when cattle have been exceedingly scarce? A. 9 cents is a high price to get.

“Q. Is not $7\frac{1}{2}$ cents an exceedingly high price to get?

(2288) “A. $7\frac{1}{2}$ cents is a good price to get.

“Q. Is not the normal price more nearly 6 cents?

“A. Well, I would say $6\frac{1}{2}$ cents to 7 cents would be the normal price of cattle.

“Q. Having paid \$40 or \$50 for a two-year-old steer, you would sell him at $6\frac{1}{2}$ or 7 cents, would you, when he weighed 700 or 750 pounds?

“A. I would sell him for just what I could get for him.

“Q. Well, would you sell him for $6\frac{1}{2}$ or 7 cents after having paid \$40 or \$50 for him the year before?

“A. Yes; that would show a fair profit in the steer for the year.

“Q. It would? A. Yes.”

MR. SEARLS: Mr. McCutchen, I call your attention to the fact that Mr. Fallon’s prices are on yearlings and not on two-year-olds.

MR. McCUTCHEN: That would not make any difference by

the pound, Mr. Searls. He did not say he would not buy the yearling by the pound; he said the yearling would cost \$22.

MR. SEARLS: Yes.

MR. McCUTCHEN: Of course, we understand that. Nobody would be foolish enough to say that a cattleman would sell a steer that weighed 1000 pounds for the same amount that he would sell one that weighed 750 pounds.

MR. SEARLS: No, but as I understand it, when they go out to buy cattle on the ranges, it is my information that they buy them by the head.

MR. McCUTCHEN: Oh, you are very much mistaken about that, Mr. Searls; no man who buys cattle buys them by the head; they are not bought by the head, they are bought invariably by the pound. Mr. Greene calls my attention to the testimony of Mr. Fallon; I will read it from the printed abstract (Ab. 397):

“The farmers in that locality who graze their cattle on the hill and market for beef purposes do not get good prices for them. They get all the way from 5½ to 6 cents, which is a fair price; the top of the market is 7 cents.”

MR. SEARLS: That is sale to butcher shops and the like.

MR. McCUTCHEN: That is the top of the market. In other words, for the prime beef that Mr. Callaghan said could not be raised upon the Calaveras hills that is what they get. So I am assuming, Mr. Searls, they get his top-of-the-market price.

MR. SEARLS: I don't think you have seen the point of my criticism yet; my criticism is directed to the price which he pays the person from whom he buys the yearling or the two-year-old down in Mexico, for instance, or in Arizona, or anywhere else, as distinguished from the price he gets in selling them here in the market.

MR. McCUTCHEN. The point I am making, Mr. Searls, and it is a point that is perfectly plain to me, is this: This expert in cattle raising told us he would pay for a steer weighing from 450 to 500 pounds from \$40 to \$50; now, it is to be taken for

granted that when that steer was fattened and ready for the market he could not expect to get above the top of the market price as fixed by the witness he produced here. It is a charitable characterization of that testimony to say that Callaghan was over his depth, he did not know what he was talking about. Callaghan, from start to finish, assumed a virtue whenever he did not have it; there was no feature with reference to those lands about which he was willing to confess ignorance.

“Q. Will you figure it out for us? Let me ask you, before you figure that out, if it is on that basis you fixed the value of these grazing lands?

“MR. STEINHART: I object to that, Mr. McCutchen. You know that is not fair. Mr. Callaghan has made a mistake in arithmetic and you are trying to trip him up on a mistake in arithmetic.

“THE MASTER: I understand the witness does not figure that way at all.

“THE WITNESS: I am figuring from memory on all these things.

“THE MASTER: Q. Have you figured in the profit on the cattle in determining your values?

“A. No, I have not, Mr. McCutchen is putting up to me an ideal condition, that a man was going to buy an ideal steer—

“THE MASTER: That is what I understood, Mr. McCutchen; he has given fixed prices for certain pasture land. I don't think he figured an increase in the steers, at all, for instance.

“MR. MCCUTCHEN: I will ask him that. I supposed he had.

“Q. How do you figure the value of the land?

“A. I figured them under normal conditions what they would carry per year.

(2289) “Q. Didn't you necessarily take into consideration the profit the owner of the range would derive from the stock he ran on the range? A. Yes, sir.

“Q. In other words, you went through the very operation that I am trying to get you to go through now, didn’t you?

“A. Yes, I went over it carefully in reasoning it out, but not in a condition like here, where I am called upon to do mental arithmetic and different other gymnastics of that kind. I can’t do it.

“THE MASTER: Well, I was mistaken, Mr. McCutchen.

“MR. McCUTCHEN: I only followed that up in view of the gratuitous suggestion by counsel on the other side that I was unfair with the witness. I was quite sure that the witness and I were at one with reference to the matter.

“MR. STEINHART: I understand the witness has testified this way: The witness has testified he valued these lands from his experience, from his knowledge of what lands sell for, and so forth. He has testified to that a good many times, and he has testified to sales. The witness, I know, as a matter of fact, for the purpose of checking, has figured out—

“MR. McCUTCHEN: I submit that this is not proper, your Honor; I am cross-examining the witness.

“THE MASTER: I presume it is not proper for you to give any statement of what knowledge you may have as to that matter.

“MR. STEINHART: The witness has testified time and again that he has not valued the lands simply by trying to check up the profits, but he has taken his knowledge of land values and sales, and so on. I do not want him to be put in the position of basing his values solely on an estimate of what the profits are going to be.”

Quite naturally he did not.

“THE MASTER: He has just stated what he based his value on.

“MR. McCUTCHEN: Q. For the purpose of getting at the value of these lands, Mr. Callaghan, you did determine (2290), or try to determine the number of cattle which they would

support, and the profit which the owner of the cattle would derive from them after having grazed them upon the land, did you not?"

Now, just note this answer, in view of the intervention of counsel:

"A. Yes, I did to a certain extent"——

He had told us repeatedly when he was asked to tell how he got at the value of these lands, that he reached it by determining the number of head of stock they would carry.

"A. Yes, I did to a certain extent, but that was not the entire basis upon which I calculated the value of these lands. I was guided by neighboring sales of similar lands also in localities surrounding these lands. That was one of the great guides to me in arriving at an appraisal of these lands, the value of surrounding lands, what they sold for in the open market, that and my knowledge of the stock business and what those ranges would carry in the line of stock and the reasonable profit a man was supposed to get off them or should get off them; those matters, taken all together, were the basis of my appraisal of these lands.

"Q. What would be the value of a two-year-old steer bought by the owner of these grazing lands to turn out there to graze?"

This answer is amusing to me in view of the unlimited knowledge the witness claimed to have upon the subject before he was cross-examined with reference to his knowledge.

"A. I cannot answer that question.

"Q. That is to say, having told us you went through that operation for the purpose of determining, in part at any rate, the value of this property, you cannot tell us now what the operation was?

"A. I can tell you what the operation was, that a certain range would carry a certain number of cattle for the year. The man owning those cattle would be entitled to get something for his time, his labor; he would be able to sell a certain number

of those cattle off at a certain price, and from the proceeds of those sales have enough to pay his interest upon the investment in the land, and for his own time.

“Q. We will take that for granted, Mr. Callaghan, that he would not want to go into it unless he could make something out of it.

“A. I did not figure on the basis of what a certain steer would cost me, or what another steer would cost me, or what two or three steers would cost. Here is a man running a number of head of cattle for the year (2291); that man ought to sell a certain number each year at a certain price; out of the price he got for them would be taken his wages for himself, his expenses for the year, the interest on his investment, and the interest on the land and then if he had a good successful year, taking a number of years one with the other, the result of that would justify me in saying a range that can produce that much money and pay that interest is worth a certain sum.

“Q. Now, then, tell us again, as I say, what the cattle would cost him when he bought them, and what he would get for them when he sold them?

“A. I figured that a man buying cattle for range purposes, putting them on a range and feeding them, ought to get them for \$40 to \$50 a head, and he ought to sell those cattle for from \$50 to \$60 a head; but he would not sell all that he bought, he would always have some drag behind, and besides those, he would have other cattle coming along, too, besides the ones he purchased.

“Q. He would get to a point after a while, where he would sell a certain number every year, would he not?

“A. Yes, that is the point he would get to.

“Q. And the cattle would weigh, according to you, how much more at the end of one year than at the end of the previous year?

“A. Well, I would say that the cattle should gain—a two-year-old and a three-year-old ought to gain 100 to 120 pounds a year.

“Q. Not more than that? A. No.

“Q. What would they weigh at the beginning of the year?

“A. 550 to 600.

“Q. That is to say, an animal, that is a two-year-old, weighs 600 pounds, and would gain only from 100 to 120 pounds in a year on good feed? A. He might gain up as high as 150 pounds.

“Q. But he would not gain more than that?

“A. I don't think he would.

(2292) “Q. Now, if you were a stock man, and you had a range, would you buy cattle that would only gain, between two and three years old, 120 or 150 pounds?

“A. Well, that would depend upon the year, I would have to buy them and take my chance with the year, with the season, as it came along. In one season the cattle might gain a whole lot more, in another season not so much, in another year you would be very lucky if you could dispose of the cattle at all, you might have to carry them over on account of lack of rain, or something.”

He must have unconsciously been thinking of the Mocho at that time.

(2293) “Q. When you were in the cattle business, Mr. Callaghan?

“A. I never was engaged in the cattle business, Mr. McCutchen.

“Q. Then you never grazed cattle on grazing lands similar to those the valuation of which is involved here?

“A. Of my own cattle, I did not, no.

“Q. Or anybody else's cattle?

“A. Or anybody else's cattle.”

* * * * *

(2296) ‘Q. Now having stated to us two classes of grazing

land what rule did you adopt to enable you to fix a value upon the different grades in those two classes?

“A. Well, I used my knowledge in grazing and stock raising; I used my experience in land values throughout the locality, and the surrounding localities, and I used my knowledge of sales of similar property where the willing buyer met the willing purchaser, and the price they paid for land of similar character in that and other localities adjoining. Those were the guiding factors in arriving at a valuation of this kind.”

These are all nice, glittering generalities, but they do not inform us very much on this subject.

(2297) “Q. Do you think that the fact that you have grazed sheep on some of these mountain lands would enable you to tell how many acres would be required to maintain a steer for a year?

“A. Yes, I think it would; not alone the fact that I grazed sheep over these mountain ranges, but my knowledge of the cattle business and my knowledge of these ranges where they range cattle, and what number of cattle it is usually safe to put upon a range, I think that would be sufficient to justify me in stating what I think a range would carry.”

Then he testified that he had had some experience with a Mr. Johnson. He was asked to tell his observation and knowledge, and he said a Mr. Johnson had given him some information some eight or nine years ago.

(2300) “Q. Now, coming back to your experience with Mr. Johnson, you don’t know, even from reports from Mr. Johnson at the time, how many cattle he grazed on his land, do you?

“A. No, in a general way I do know how many cattle he grazed on his land.

“Q. Well, you don’t know it from observation, and you don’t know it from anything Mr. Johnson told you?

“A. No, but my knowledge of stock conditions is sufficient

to justify me in saying I can tell how much stock it is reasonable for a farmer or a stock man to put upon a certain range with safety."

(2301) The witness said that Mr. Johnson had told him that he had 350 head of cattle on the range.

"Q. How long did he tell you they were there?

"A. Well, the usual season.

"Q. How long did Mr. Johnson tell you they were there?

"A. He did not tell me. My own observation is what I rely upon for that.

(2302) "Q. You had no occasion to count how many cattle were on the Johnson range, did you? A. No.

"Q. And you had no occasion to know, and you did not in fact know the condition of the feed on the Johnson range during any part of that year, did you?

"A. Oh, yes, I knew the condition of the feed on that range, I could see it at all times.

"Q. How much of the range could you see?

"A. Oh, different sections of it I passed over. I could see two-thirds of the range at all times.

"Q. And you have a distinct recollection now as to the condition of feed on your 20 trips through that place?

A. Just as distinct a recollection as a man can have about those things.

"Q. What year was that?

"A. I cannot place the year right now. It was at the time Mr. Johnson changed from sheep to cattle.

"Q. Was it a good season or a poor season?

"A. It was a fair average season.

"Q. You don't know whether it was a dry year or a wet year?

"A. It was not a dry year, no."

I think I am correct in saying that that is the only opportunity that this witness testifies he ever had for observation,

and admittedly he has never had any experience.

We asked him then for some sales that threw light upon the value of these grazing lands, and he testified as follows:

"I know of sales similar to those in the Livermore country, such as the sale from the McLoughlin Co. to Frank Kelly, in 1908, of section 5, which sold for \$6 an acre, and section 33 for \$7 an acre; that those two sections are as good as the best grazing land in Calaveras." (Ab. 635, Tr. 2304).

I will call your Honor's attention later on to the testimony given by Mr. Hayes on that matter.

Now, it is almost incredible, but I am going back for a moment to call your attention to what this witness said about the value of land that would support cattle at the rate of one to 6 or 7 acres. On page 2282 he was asked this question:

"If the land would support cattle at the rate of one to 6 or 7 acres what would it be worth?

"A. From \$15 to \$20 an acre."

Now, it must occur to your Honor that if this witness had been a practical man and had answered that question from a knowledge of the stock business, you could not have gotten any other answer from him if you had put the question to him in a dozen different forms; his familiarity with the business, just as your familiarity with your profession, would have suggested the same answer to him every time.

Now, then, at 2308 (Ab. 636) he said: "A range that will support cattle at the rate of one head to 5 or 6 acres will probably run to \$30 an acre."

One hundred pages before that he said it was worth \$15 to \$20 an acre.

Now, while it is not exactly on this subject—I simply have it grouped here—I desire to call attention to this testimony. (Referring to the Niles Canyon lands) Callaghan said:

"I consider that I have sufficient knowledge or information to enable me to put a valuation on these properties. I have never

bought or sold any property similar to these. I do not remember the sale of any similar property."

When Mr. Gale and Mr. Schween came to consider this land, they simply said, "We have no yardstick." Not so, however, with Mr. Callaghan.

The witness was questioned about a number of sales, beginning at page 2334 and going to page 2340, in the vicinity of the Pleasanton property, and he admitted he never had heard of them. As he had said that these lands bought by Kelly were as good as the best of the grazing lands of the Spring Valley, he was questioned a little further on that subject and said:

(Ab. 643; Tr. 2347) "The grazing lands on the Arroyo Mocho are as good on the average as the grazing lands around Calaveras, San Antonio and the Arroyo Valle. These grazing lands on the Arroyo Mocho are better than the average grazing lands owned by the Spring Valley Water Company, and are better than the average of the grazing lands on the Arroyo Valle, and in the upper Alameda Creek, and are better than the lands in the (2348) La Honda Creek, and the grazing lands in Calaveras Creek. They are equally as good as the grazing lands in and around the northerly end of Calaveras Valley, and from there down to Sunol."

* * * * *

(Ab. 644; Tr. 2348-9) "The rainfall at Arroyo Mocho and Corral Hollow is somewhat less than in the Calaveras country. In some respects, that is an important factor in determining the value of grazing land, but the difference is so very little in the rainfall between those points that it don't make much difference in the final results in an average of 5 or 10 years."

The hydrographic records offered in evidence here show that the rainfall in Calaveras is 40% greater than the rainfall in Arroyo Mocho.

MR. SEARLS: Will you indicate which exhibit you refer to when you make that statement, Mr. McCutchen?

MR. McCUTCHEN: I will have to get it for you, Mr. Searls; there was a map offered on that matter.

MR. GREENE: It was one of the early exhibits, Mr. Searls.

MR. McCUTCHEN: Inasmuch as counsel has asked about that, and while I intend to take it up in connection with another subject, I may say now that that was one of the reasons assigned by Mr. Hayes for the superiority of the grazing lands in and about Calaveras over those in the Arroyo Mocho. He said that the increased rainfall there resulted in producing more and better feed than was produced on the Arroyo Mocho. And that is common sense.

Callaghan's Knowledge of Pleasanton Prices.

Now, proceeding along the same line, that is to say, for the purpose of endeavoring to ascertain the qualification this witness had to tell us the value of these lands I call attention to page 2134, referring to the Pleasanton lands:

(2134) "Q. Tell us of any sale you know of in the vicinity of these properties that was made within ten years?"

I think that that was a small group of properties; I will get them later and give it to counsel. I don't think this question applied generally to the Pleasanton country; I think it applied to a restricted portion of it near which there had been some sales.

"A. I don't know of any sale made in the vicinity of these properties. I used my judgment in putting the valuation of \$500 an acre on that property.

"Q. Do you think there must have been sales made in there?

"A. Oh, there must have been sales made, yes.

(2135) "Q. Do you think those sales would have been a better guide than your unsupported opinion, Mr. Callaghan, as to what they would sell for?

"A. I don't think they would, because a man buying those lots would have to sell those lots for a great deal more than \$500 an acre in order to get his money back; and I also con-

sidered the time he would have to hold the lots and the time he would have his money invested in them before he could get it back.

“Q. At any rate, Mr. Callaghan, you don’t know of any other sales in the neighborhood, or the prices they brought?”

“A. No, I don’t know of single lots in the neighborhood having been sold or what they were sold for. That would be no guide to me in making a valuation of that property, anyway. I figured in cleaning out that property in one purchase, the man who could pay for it in one purchase, what he could afford to buy it at, and what he would have to sell it at.

“Q. Do you know the size of lots in that subdivision?”

(I think this was known as the Lillienthal Subdivision.)

“A. My recollection is that they varied in sizes, some larger and some smaller, or probably the owner purchased two lots and put them into one.

“Q. You don’t know whether any sales have been made in that particular subdivision, either, do you? A. No, I do not.”

* * * * *

(2141) “Q. By the way, in the course of your inquiries did you ascertain whether a sale had been made of some land in that vegetable tract south of R-268? A. No, I did not.”

* * * * *

(2209) “Q. Do you know when the Schweens bought parcel 283, just south of S-268? A. No, I don’t.

“Q. You don’t know what they paid for it? A. No, I don’t.

(2210) “Q. You don’t know that they bought it in 1908 and paid \$10,000 for it? A. For 40 acres?

“Q. Yes. A. No, I do not.”

Callaghan’s Knowledge of Vegetable Culture.

(2138) “Q. How much will the best of the \$500 an acre land produce in alfalfa?

“A. I don’t consider the \$500 an acre land is available for alfalfa.

"Q. Well, in vegetables, then.

"A. All that \$500 an acre land should produce as good vegetables as can be found anywhere in the country; it is all good land.

"Q. Will R-268 not do that? A. It will do that.

"Q. Do you know that from any experience you, yourself, have had with land in Pleasanton, or about Pleasanton, or elsewhere?

"A. Yes, sir, I do.

"Q. Where have you had that experience?"

Now, just think of the worthlessness of testimony of this kind from a man who says he was valuing these lands on what they would produce.

"A. I saw the time the Japanese and Chinese were down on the land south and north of county road 2000, and I saw the crops they produced on that land, vegetables and berries, and I saw similar land to that, it looked similar, planted to those crops that did not produce nearly as much as those men got down there.

"Q. Do you know whether there was as good tillage in one case as in the other?

"A. Apparently it was the same tillage.

"Q. What opportunity did you have to observe the method of carrying on those two operations?

"A. The usual method of observation, passing along and looking at the crops.

"Q. Were you in the enclosure? A. I was all through there.

"Q. What is the other piece of land that you say was like R-268, where the vegetables were not successful?

"A. I don't think I mentioned any place.

"Q. You said that other places like this land were not successful, or that on the other places they were not successful.

(2139) "MR. SEARLS: He did not say not successful, he said they were not as good.

"MR. McCUTCHEN: I am asking him where that land was.

"A. I saw vegetables tried on all of those areas in there. I saw vegetables tried in 280 and along there, and they were not as good as the vegetables produced south of the county road.

"Q. Who tried them in 280?

"A. I don't know the man who was farming in there at that time.

"Q. When was it? A. It is several years ago.

"Q. How many years ago? A. Ten or twelve years ago."

Now, that is the one experience he knows of, that is to say, that is the one opportunity for observation that he had.

"Q. To what extent was 280 used to produce vegetables ten or twelve years ago?

"A. I don't know to what extent. There were vegetables in there, growing there, I saw them there.

"Q. For market, or for a home garden?

"A. Either for the market or for home garden, I don't know which. There were potatoes in there this year, and there were beets in there this year.

"Q. Were the potatoes successful?

"A. They looked fairly good to me."

He is not willing to say they were a good crop, they looked fairly good to him.

"Q. Is it on that experience of ten or twelve years ago that you condemn it for vegetable growing?

"A. My general observation and my knowledge of the land justify me, I think, in saying that these lands south of county road 2000 and those lands on which I put \$500 an acre is more fertile land and will produce more abundantly than those lands will.

"Q. I am asking you, Mr. Callaghan, for your experience that enables you to state that conclusion. That is all I am asking you to give us. What means of comparison have you had?

"A. The means of comparison are my observation and my knowledge of the land, and my knowledge of a crop in passing along and looking at it, and what it is and what it is going to produce."

Here is a man who was never engaged in vegetable culture in his life.

(2140) "Q. Now, I ask you again, do you mean to say that under the same tillage, these lands in 280 and R-268 would not produce the same crops as the land you valued at \$500?

"A. Yes, they will not produce the same crops.

"Q. Now, tell us upon what you base that statement?

"A. My knowledge of the land and my observation of what has been produced on different tracts justifies me in saying that.

"Q. When have you ever known those two tracts, or any part of them, to be used for vegetable growing when the tillage was first class?

"MR. SEARLS: What do you mean by first-class tillage?

"MR. McCUTCHEN: I mean first-class tillage, I mean up-to-date tillage. This man knows what I mean, he is a farmer.

"MR. SEARLS: Do you mean a racial distinction?

"MR. McCUTCHEN: You might say a racial distinction, yes, because the Chinese and the Japanese and the Italians usually get the best results out of vegetable gardens; in that sense, it is racial.

"A. My recollection is I saw those tracts and vegetables with the same tillage given to each tract, the same given to one tract as given to the other, and the tracts I put the \$500 an acre on produced the best crops."

We tried to get him to tell who the farmers were, when it was farmed, what the production was, and so forth, but we could get no information from him on any of those subjects.

Callaghan's Alfalfa Experience.

Now going along on that same subject with reference to this man's ability to value land I quote from page 2178. I had

previously called his attention to Parcel 278 and I read to him from the transcript:

“ ‘Q. The next is Parcel 278.

“ ‘A. 177.37 acres. This is the land upon which the Heath Dairy Company is located at the present time; it has a frontage on the Santa Rita-Dublin road; also some acreage lies north of Black Avenue; soil heavy clay loam, in alfalfa which is an indifferent success; value \$400 per acre.’

Do you mean by that that you wish to be understood as saying that at some time in the past that was an indifferent success, but that it is a complete success now?

(2179) “MR. SEARLS: Mr. Callaghan, before you answer that question, I suggest that you look at your notes and see whether there was any omission made in your answer when you gave it before.

“A. I don't think so, Mr. Searls, because at the time I reported on that and made those notes up that alfalfa was an indifferent success, a very indifferent success; there were gophers and field mice there and there was no irrigation, and that alfalfa did not appear to be very good; but after that, after they got the electric pumps installed in there and got water on it and irrigated it, it was good, and it seems to be very good alfalfa today.

“THE MASTER: I think that is the explanation for it; he was reading all through his testimony from his notes. I think that is the explanation of it.

“MR. SEARLS: Mr. McCutchen, will you permit the witness to read the last clause of his notes?

“MR. McCUTCHEN: Oh, certainly.

“THE WITNESS: The notes are just exactly as you read them from the transcript.

“MR. McCUTCHEN: But Mr. Searls suggests that there is some portion you have not heretofore read.

"MR. SEARLS: It is this: 'Owing to the depredation of gophers.' That is in my notes.

"Q. Is that the way it reads, Mr. Callaghan, 'an indifferent success, owing to the depredation of gophers'?"

"A. That is what it says here.

"MR. McCUTCHEN: Q. Why didn't you read that before?"

"A. My recollection is I did read it; I aimed to read everything that was on these sheets.

"Q. Was not that reflected in your valuation of \$400 an acre?"

"A. It was not, for the reason that I knew that if this water was put upon that alfalfa they could grow better alfalfa than they were producing there at that time.

(2180) "Q. What kind of soil is that? A. That is clay loam.

"Q. Is it rich soil? A. It is a fairly good soil, yes."

MR. SEARLS: Mr. McCutchen, that is twice you have emphasized that word "fairly"; did the witness emphasize it in just that way?

MR. McCUTCHEN: That was my emphasis, Mr. Searls.

MR. SEARLS: Well, isn't there a difference in saying "fairly good soil" or in saying, in positive tones, "it is fairly good soil"?

MR. McCUTCHEN: He was not fair enough to say that it was a good soil, he wanted to qualify it all the time by saying it was a fairly good soil.

MR. SEARLS: Many a man uses that expression.

MR. McCUTCHEN: This witness was certainly wide awake enough in using that word, Mr. Searls.

"Q. Does that soil bake? A. Not very readily.

"Q. Does it bake at all? A. No, it don't."

Why didn't he say, in the first place, that it did not bake? Why does a man say of a soil that does not bake at all that it does not bake very readily?

"Q. What will any of these other soils produce that that will not produce?"

“A. Those soils on which I put a higher value would produce a bigger yield of anything than that soil will produce.

“Q. How much of a yield does this soil produce?

“A. At the present time it is producing a pretty good crop of alfalfa.

“Q. How much in tonnage?

“A. From a ton to a ton and a quarter per acre.

“Q. How many cuttings per year?

“A. They are cutting it green and feeding it to the cattle now, and they will get more cuttings that way than if they cut it for hay.

“Q. If they were cutting it for hay how many cuttings would they get? A. Five cuttings would be a big average.

“Q. Do you know that from experience?

“A. I know from experience that five cuttings on that land for hay would be a good average, because they would have to wait until the hay got matured and blossomed before they could cut it for hay and get a good crop.

“Q. That is so, isn't it, everywhere, isn't it, Mr. Callaghan, where alfalfa is grown? A. It is.

“Q. What experience have you had that enables you to say they cannot get more than five crops per annum from that land?

“A. My experience is 30 years covering the climatic conditions of that country, the rainfall in the spring and the rainfall in the fall that catches you with the first and the last crop, probably. I would say that five crops can be gotten off of that land on account of the weather conditions.

“Q. What will any of the other land produce in the Pleasanton (2181) district, the best of the land, that this land will not produce?

“A. The same answer will apply to that question that has been made before, that this soil will produce everything that the other soils will produce, but not so abundantly.

"Q. When have you seen the test made that enables you to determine that?

"A. I don't need to see the test made; I can see the soil and I can see the conditions surrounding it. I know it won't produce as much as those tracts I have appraised at \$500; it is not in it.

"Q. Take a particular crop, and tell us how much the best land will produce as compared with this?

"A. This land here will not produce as good a crop of strawberries, it will not produce as much or as good strawberries as will be produced on the land further down. There are other vegetables—carrots, and onions, and different things that will grow with greater profusion on this soil."

Now, you would think, in view of his observation made time and time and time again, that he knew what these lands would produce, that he could answer this question:

"Q. What is a good production for strawberries?

"A. I could not tell you"—

And yet R-268 won't produce as many strawberries as the land south of the road!

"A. I could not tell you. I know they can get better strawberries and a larger crop of them on sandy loam soils because they are warmer and produce better than on clay loam soil.

"Q. What is the best production of onions per acre on the best land around Pleasanton?"

You will remember he said that onions was one of the crops that the land south of the road would produce in greater quantity than the land north of the road.

"A. They have produced some good crops around there.

"Q. Well, what is it?

"A. They will get as high as 35 sacks to the acre.

"Q. What will this land produce?

"A. I don't think it will produce that much.

"Q. But you don't know, do you?

"A. I am using my judgment and giving you my best judgment in the matter, and my experience.

"Q. It is not based on actual experience, is it?

"A. It is based on looking at the land, my knowledge of the soil (2182), my knowledge of the conditions surrounding it; that justifies me in saying that this land will not produce as good a crop of those fruits and berries and vegetables as what would be produced on the sandy loam soils further south on which I put \$500 an acre. \$400 an acre is a good big price on land; it is no poor land that will stand \$500 an acre.

"Q. And \$500 an acre is a bigger price than \$400, isn't it?

"A. Yes, \$500 an acre is a bigger price.

"MR. STEINHART: Q. And \$450 an acre is just in between, isn't it? A. It is.

"MR. McCUTCHEN: Q. Where was that crop of onions raised below county road 2000 that you say produced 35 sacks to the acre?

"A. I could not locate the particular tract now. It is years ago since that crop was raised. There have been several crops of onions raised down there; the Japs and the Chinese had them in there. And the Portuguese did some farming down in there and raised onions, too. I could not tell you the particular tract of land that was on. All of that land will produce onions; you don't have to single out any particular tract from another that won't produce onions, they will all do it."

Alkali Grass Lands (Callaghan).

(Quoting now from page 2182:)

"Q. What did you say was the purpose or use to which parcel 279 could be put? That is up in the northeast corner of the map.

"A. In my opinion, the best and the highest use that that could be put to would be pasture.

"Q. Is it good pasture land?

(2183) "A. Yes, fairly good pasture. They grow a salt

grass on there; they grow mustang clover on there in the spring-time. That is very good pasture. It is a land that is swarded over. It has been used for pasture now quite a while and it has a good sward on it and by fencing that in and using it for pasture, I think the best results could be obtained.

“Q. What are the grasses besides salt grass and clover that grow upon this tract?

“A. Wire grass, a kind of a bunch grass; and then other native grasses grow in through there.

“Q. Is there any alkali to be seen on that tract?

“A. Yes, there is.

“Q. Very much?

“A. Not noticeably very much from the road, but if you go in to it and walk through it, you will find traces of alkali in it.

“Q. Have you been through it?

“A. You bet I have been through it.

“Q. And you found several traces of alkali?

“A. I found several.

“Q. Would you say several, or a great many?

“A. I found several, not a great many; I have found enough to know there is alkali there.

“Q. Do you find any bare patches of land there where vegetation does not grow. A. Very few.

“Q. These grasses you have spoken of, do they grow in alkali—bunch grass and clover?

“A. Some of them will grow in alkali and some will not. Salt grass will grow in alkali. Mustang clover will grow in alkali soil. Bunch grass will not do so well in alkali soil. The whole, entire area of that tract is not alkali; if it was, it would not be worth \$120 an acre.

“Q. How much of it is alkali?

“A. I could not tell you that in acres.

“Q. You made the statement, as I recall it, that it was underlaid with alkali; will you look at your notes on that?

“A. Yes, it is my impression that it is, and that the more you cultivate it the more you will bring the alkali to the top.

(2184) “Q. The more you spend on it the poorer you will be: Is that it? A. That is right.

“Q. Is it your understanding as a farmer that it is the cultivation that increases the alkali or brings it out?

“A. Under some circumstances it is.

“Q. Under what circumstances does cultivation bring out alkali?

“A. Well, you plow the land over and don't get it harrowed down, and you get a crop sown in it and the rain comes and falls on the surface of the ground, and when it evaporates it leaves a crust of alkali behind it. In most of those soils, it is very hard for the water to percolate through them, the water sets on top, and that seems to have a tendency to draw the alkali up to the surface. Some evidence of it appears after a ranch has been plowed and then there is a heavy rainfall and the water allowed to evaporate off it; traces of alkali will be shown then; whereas in a case like this where the sward is on the ground and the grass is over there and it has not been disturbed for some time, you won't find as much evidence of alkali on the surface where the land has been cultivated.

“Q. In other words, you can see it in one case, but not so easily in the other? A. Yes, sir.

“Q. But it is there just the same?

“A. It is the effects I go on more than anything else.

“Q. It is the water that brings the alkali out, and not the cultivation, is it?

“A. Well, if that was to hold good, then the alkali would appear in this grass land after the water evaporates again, but you don't see it in the grass land.

“Q. You don't. A. Not so much.

“Q. You have never seen this land cultivated, have you?

"A. Yes, I have seen efforts at cultivation on that (2185) land one time, more than once, I think.

"Q. Were there evidences of alkali there then?

"A. Yes, very much evidence of it.

"Q. Will you tell us now on what portion of that tract you found these evidences of alkali?

"A. Nearly all of the tract except that portion back toward the creek. There are areas toward the creek where there is not so much alkali as toward the road. But generally speaking all over the tract, Mr. McCutchen, there is alkali to be found.

"Q. Enough to interfere with the production of vegetables?"
I think that word should be vegetation.

"A. Enough to interfere with the successful production of crops.

"Q. Then it is your opinion that crops cannot be produced successfully on that land on account of the alkaline condition?

"A. Yes, it is my opinion that a crop cannot be produced successfully on that land on account of the alkali,—and by a crop, I mean a good crop, 25 or 35 sacks of barley. That land will not produce that kind of crop.

"Q. Is not a yield of from 25 to 35 sacks of barley an extraordinary yield? A. It is a good yield, yes, sir.

"Q. Is it not an extraordinary yield?

"A. No, 35 is an extraordinary yield.

"Q. Where is any land planted to barley which you know of that produced 35 sacks to the acre?

"A. There have been 35 sacks gotten off of a portion of the Schween ranch. Henry Mohr got 35 sacks off his ranch. Gus Hagemann did the same with his land"—

In other words, this particular property was one of three pieces he could name that were sufficiently rich to yield 35 sacks of barley to the acre and he valued it at \$290.

"A. (continuing) Henry Mohr got 35 sacks off his ranch. Gus Hagemann did the same with his land, and he got 35 sacks

off it this year. That land that gets poorer as you go toward Livermore, there have been 35 sacks produced there, along portions of Los Positos Creek.

“Q. What is the portion of the Schween Ranch that will produce 35 sacks to the acre?

(2186) “A. Any of it in good condition and under a year’s rest, will produce 35 sacks to the acre.

“Q. Do you mean to say that any of that land in Pleasanton requires a rest in alternate years, or do you mean one year in six or seven?

“A. I mean that that land must have a rest one year in 6 or 7.

“Q. You do not mean alternate years?

“A. Oh, no, I don’t.

“Q. What, in your opinion, is the value of land that will produce six years out of seven 35 sacks of barley to the acre?

“A. \$290 an acre.

“Q. And that happens to be the figure that you have hit upon as to the Schween land?

“A. I happened to give you that answer because you asked me that question, and they were so close to each other.

“Q. Is that the way you got at the value?

“A. No, it was not.

“Q. Then just leave that out of the question, Mr. Callaghan, and tell us what would be the value of land that, six years out of seven, would produce 35 sacks of barley to the acre?

“A. I am telling you that the value would be about \$290 an acre, or \$300 an acre, along thereabouts.”

I said to you this morning that he had said that the Calaveras Valley land was worth \$125 an acre because he had seen it produce a barley crop of 10 sacks,—I ought not put it in just that way because that is not exactly what he said; he said he thought it was worth \$125 an acre because he knew what it produced, and when he was asked to state what it had produced

he spoke of a barley crop of about 10 sacks to the acre.

"Q. What would be the profit realized from a yield six years out of seven, of 35 sacks of barley to the acre?

"A. A man could afford to pay that price for it and pay taxes on the land and have a profit sufficient to justify him in giving his time and his effort to the cultivation of that land.

"Q. What would be his profit per acre on the 35 sacks of barley. A. That would vary from year to year.

"Q. Well, taking it on the average, from your experience?

"A. He ought to have a profit left, over and above his expenses, of \$5 or \$6 an acre.

"Q. Is that a carefully considered answer?

"A. Yes, a pretty carefully considered answer."

And later on he said what he meant was five or six dollars over and above his expenses, and interest at 5% on the value of the land.

Hop Yard Tract (Callaghan).

Now, referring to 0-268:

(2057) "You stated the other day that hops had been grown on that land with indifferent success. Did the assumption that hops had been grown with indifferent success influence you in placing a valuation on that property?

(2058) "A. No, it did not.

"Q. Why did you say that the hops had been grown with indifferent success?

"A. They abandoned the hop-growing and pulled out the poles and gave it up.

"Q. Did they abandon the hop-growing before the property was sold to the Spring Valley Water Company?

"A. There was quite an area of it that was abandoned before the sale.

"Q. Do you know what is a fair production of hops to the acre? A. No, I do not.

“Q. What warrant have you for saying that hops were grown upon that land with indifferent success?

“A. The conclusion that I came to was that if hops had been a success on that land, they would not have abandoned raising them prior to the time that the Spring Valley Water Company purchased it.

“Q. And, approaching this land, now, in a spirit of fairness, such as you have described to us, you thought that justified you in saying that hops were grown there with indifferent success, did you?

“A. I will answer that question by saying yes; I went over that land several times during the time the hops were on it; there were areas in that hop field that produced better than other areas; there were some vines in that hop field that looked better than other vines, some that looked healthier than others and the hops were better; I could not account for that, because it seemed to be the same kind of land all over the entire area. In 1914, when I took up the matter of appraising this property, Mr. Heath had gone in there and had planted that land to alfalfa, with barley in it. In the latter part of March or the beginning of April, I went in there and went all over that land, and I found considerable evidences of alkali in quite an area, about 200 acres on the site of the old hop yard.

(2059) “Q. Black or white alkali?

“A. White alkali. I could find the white alkali on top of the ground; I observed that the leaves of the barley were turned yellow; I could not find any reason to account for it except that the alkali was affecting the growth of the barley. Afterwards, when he irrigated that and put the alfalfa in, the alkali seemed to wash out of it again. But the alkali is in that soil, and it will come up some day and probably kill the crops on the land.”

Now, I am not going to be technical about Mr. Callaghan's lack of knowledge but we know that when that alfalfa and barley

crop was planted that it was one crop and that the seeds of the two were planted together and that they came up together. He says that when the barley was cut the alfalfa was planted.

“Q. That is to say, notwithstanding the fact that the alfalfa is there—and, by the way, is it a good stand?

“A. It looks very good to me, fairly good.”

Your Honor saw that. You do not need to have anybody tell you whether it looked good, or not.

“Q. Notwithstanding the fact that there is a good stand of alfalfa, you are assuming that the alkali would kill it some day?

“A. The fact that the alkali is there——

“Q. Answer the question.

“A. Yes, I am assuming that the alkali will kill it some day. That is answering it absolutely. I say that the menace is always there.”

This witness had put a value of \$200 on that land and he proposed to stick to his guns. He says that answers it absolutely; that is to say, we can take that answer, there is no question about it.

“Q. Will you tell us of any land which you know where a good stand of alfalfa has once been established where alkali has killed the plant?

“A. I can't call to mind any particular place.

“Q. Give us any particular instance, either in your experience or in your reading?

“A. I know that alkali will kill vegetation; alkali will retard vegetation.

“Q. How old is this alfalfa on the hop land holding?

“A. In 1914 it was planted.

“Q. And it is a good strong stand, isn't it?

“A. It looks fairly good alfalfa now.

“Q. You say 'fairly good'; are you an expert on alfalfa, Mr. Callaghan?

(2060) "A. I know a good crop of alfalfa when I see it. I don't claim to be an expert on alfalfa.

"Q. What criticism have you upon that stand, if any?

"A. The bunches might be thicker on the ground than they are.

"Q. Then, you think it is not a particularly good yield of alfalfa? A. Well, it could be better, Mr. McCutchen.

"Q. What does it yield per acre?

"A. I would hazard a guess at about a ton or a ton and a quarter to each cutting, probably."

Later on it will appear either in his testimony or in the testimony of Parsons—in fact, I think in the testimony of both—that a yield of a ton and a quarter per acre is an exceedingly fine yield.

"Q. And how many cuttings?

"A. Five, or probably six cuttings.

"Q. Six cuttings of a ton and a quarter, that would be $7\frac{1}{2}$ tons per year per acre, wouldn't it? A. Yes.

"Q. Do you mean to say that is not exceedingly good land?

"A. You are not going to get $7\frac{1}{2}$ tons of good alfalfa every year.

"Q. How do you know that, Mr. Callaghan?

"A. Because the first crop of alfalfa is never so good as the rest; while it is heavy, it has weeds in it, and is inferior in quality; and then, again, you are apt to get a rain before you cut your second crop and you are liable to lose the second crop; and also, if you get a late rain, you might lose your last crop. I know that they got a rain up there in June of this year and they lost their entire second crop.

"Q. All of which might equally be said of the best stand of alfalfa that was ever grown, might it not?

"A. Yes, that is true, but we are getting the maximum when we say six crops of alfalfa.

"Q. But you have said that with reference to this stand of alfalfa on this alkali land, haven't you?

"MR. STEINHART: I think you are confusing him, Mr. McCutchen; he said there would be six cuttings, and you immediately drew a conclusion as to the number of tons that would be taken off. In that, the witness is now correcting you by calling your attention to the fact that the first cutting is not as good, and that some other cuttings perhaps will not be as good (2061), and that the first cutting will not be as heavy as the rest.

MR. McCUTCHEN: Is that your understanding of what he says, that the first cutting will not run as heavy?

"Q. Is that what you said, Mr. Callaghan? Did you say that the first cutting would not be as heavy as the others?

"MR. STEINHART: Well, he might not have used the word 'heavy'—he might have said not as good; I don't pretend to be able to be as precise as that.

"MR. McCUTCHEN: Q. The first cutting would be heavier than the others, wouldn't it, Mr. Callaghan?

"A. Yes, but very inferior to the others in quality.

"Q. This last criticism which you have made would apply with equal force to any other piece of alfalfa, to any other alfalfa growing in Pleasanton, would it not—that is, if it could fairly be called a criticism?

"A. What was the last criticism I made?

"Q. You said you might have unfortunate conditions, you might not get these yields all the time.

"A. Oh, yes, that would apply.

"Q. That would apply to all the lands in Pleasanton, would it not? A. Yes.

"Q. It applies to the lands upon which you placed a valuation of \$500 an acre, does it?

"A. It applies to the element of chance.

"Q. I say it applies to the lands upon which you placed a valuation of \$500 an acre?

"A. The lands on which I placed a valuation of \$500 an acre was not the land for the purpose of raising alfalfa. You cannot profitably raise alfalfa on \$500 an acre land; it should be worth and is worth \$500 for some other purpose; it should be for strawberries, or some high-class use like that. (2062) That is the use I considered in putting \$500 an acre on that land.

"Q. You say you cannot afford to pay \$500 an acre for alfalfa land? A. Not in my estimation, no.

"Q. You heard me read the report of Mr. Means the other day, didn't you, in which he said that an acre of alfalfa would maintain a cow for a year?

"A. No, I was not in court at that time.

"Q. Well, he did state that, in fact.

"MR. STEINHART: Just a moment, Mr. McCutchen; he did not state that. The paternity of that report was very much questioned.

"THE MASTER: I thought it was a cow and a calf.

"MR. McCUTCHEN: In fact, it was a cow and a calf. Do I understand you to say, Mr. Steinhart, that Mr. Means did not assume responsibility for that report? I have some further information on it, and I am quite willing to have you bring Mr. Means back here.

"MR. STEINHART: We will bring him back here this afternoon.

"MR. McCUTCHEN: Yes, have him here at the next session.

"MR. STEINHART: He said he didn't know whether that report had been written or signed by him, but he said that if it came from his office he would assume full responsibility for it.

"MR. McCUTCHEN: If it is your position on this record, Mr. Steinhart, that Mr. Means is not responsible for that report, I ask you to have him here at the next session.

"MR. STEINHART: My position is on the record as it

stands, Mr. McCutchen, but he will be here at the next session.

“MR. GREENE: Whether that is correct or not, Mr. Steinhart, Mr. Means agreed to that report?

“MR. STEINHART: Oh, I am not discussing that. I want to ask Mr. Means one or two other questions anyhow, so I will have him here.

(2063) “MR. McCUTCHEN: Q. Do you say that an acre of alfalfa will not maintain a cow for a year?

“A. I don't know anything about that.”

At last we have got to one subject in agriculture on which Mr. Callaghan is not informed, he cannot tell us whether an acre of alfalfa will maintain a cow for a year.

“Q. Don't you know that that is the common experience of the dairymen on the San Joaquin plains?

“A. That an acre of alfalfa will maintain a cow for a year?

“Q. Yes.

“A. I would say yes, that that was reasonable, that it was reasonable to expect that an acre of alfalfa would sustain a cow for a year.”

He seems to have gotten a little doubtful about it.

“Q. And what would be the profit from that cow, assuming that it was used in the dairy business?”

He seems to be a little off on this line of inquiry.

“A. I don't know what would be the profit from a cow used in the dairy business, or how much milk she would give in a year, or how long she would be dry and give no milk, or what the market price of milk would be; all of those things would enter into that question of an acre of land sustaining the cow. And I don't know what the increase in the cow would be, or whether she had a calf, or what the price of the calf would be.

“Q. And yet, all of those things have a bearing on the value of the land that is available for those purposes, has it not?

“A. It has.

“Q. And about that, you say you don't know anything?

"A. I know that good alfalfa land should rent for \$20 a year, and I believe that any man in the dairy business can make a profit from good alfalfa land and pay \$20 a year rent for it per acre.

"Q. Taking your rule that the farmer is entitled to 5%, what would that make the land worth? A. \$400.

"Q. And yet you place a value of \$200 on this hop yard property, don't you?

"A. I don't consider that hop yard property as being (2064) good alfalfa land; there is always a menace that that alkali will come back and ruin your crop.

"Q. Did you ever plant an acre of alfalfa in your life?

"A. I did not.

"Q. Did you ever have charge of it after it was planted?

"A. I did not.

"Q. Did you ever observe the conditions that obtain in alfalfa crops from time to time? A. I did.

"Q. Where?

"A. Everywhere, in different parts of California, in Alameda County, in San Joaquin County, and in different places where I saw alfalfa grown and where I have seen alfalfa crops."

It is a little out of place but I am reminded that he said with reference to the Calaveras lands, that they would produce alfalfa—the valley lands on which he put a maximum value of \$150; and I am reminded that he said that the Hadsell flat lands would produce alfalfa, lands on which he put a valuation of \$200 an acre; and, by the way, he did say, as a compliment to the Hadsell lands, that there was no alkali on them. Figuring it at \$20 an acre and that the farmer would be entitled to 5%, it would make \$400.

MR. SEARLS: I don't think he made that statement as a general proposition, Mr. McCutchen. He was talking about six cuttings of alfalfa. Is it your understanding that the effect of his testimony was that he made a universal rule of \$20 an acre?

MR. McCUTCHEN: Oh no, I would not say that. I mean to say that he did not show any general characteristics around the Hadsell property that would make it different from the land at Pleasanton, although he did say that the Pleasanton lands were richer than the Hadsell lands. I will come to that later on.

“Q. And you have stated that all of that experience does not enable you to point out a piece of land on which an alfalfa stand was once obtained where the plant died subsequently on account of the presence of alkali?

“A. The life of alfalfa is about six years; it has to be plowed up and re-seeded.

“Q. Is that due to alkali, or is that due to a habit of the plant.

“A. I would say it is the habit of the plant. I say this, that alkali in the soil will retard the growth of vegetation, will retard the growth of crops and reduce the income from the land on which the alkali is.

“Q. The demonstration having been made, that is to say, alfalfa having been successfully established upon a piece of land, would you say that the fact that there were evidences of alkali there before the alfalfa was planted, depreciated or had a tendency to depreciate the value of the land for alfalfa production?

“A. I would say that there was always a menace there that was liable to come up and kill the alfalfa in that land.

“Q. And that is your opinion as a farmer, is it?

“A. That is my opinion as a farmer, and my experience with alkali in the soil, that it is there—of course, a crop (2065) may get started and do very well for a year or two, but it may be that the alkali will rise and get to the roots of the crop, and if it does, your crop is liable to prove a failure.

“Q. You said this alkali was on the surface when the alfalfa was planted?

“A. It varies; it is on the surface this year, it is down in

the ground this year, it comes up and down in the land; the plant may grow and flourish when it is away from it, but a condition in the soil, or in the climate, or in the rainfall may bring the alkali back up to the surface, and if it does it will kill your plant.

“Q. You concluded that this very same land that has produced this good stand of alfalfa did not grow hops successfully on account of the presence of alkali, did you not?

“A. That is my reasoning now as to why some hops in that yard were better than others, that some were greener, had larger leaves on them, and so forth. I believe that alkali affected the growth of the hops, and the yield of hops.

“Q. What makes the deeper root, hops or alfalfa?

“A. I think they are about of similar depth.

“Q. About similar? Do you give that as your opinion as an expert on alfalfa?

“MR. STEINHART: He stated he was not an expert.

“A. No, I am not an expert on alfalfa. Alfalfa roots probably go deeper than hops, but I think they are about the same.

“Q. How deep do the roots of hops go?

“A. That I am not prepared to answer.

“Q. How deep do the roots of alfalfa go?

“A. They go down some depth; some times you will find that they go down 15 or 20 feet.

“Q. Have you any notion that hop roots go as deep as that?

“A. They might.

(2066) “Q. Is that your opinion as a farmer, Mr. Callaghan?

“A. That is not my opinion as a farmer; I say they might; I cannot tell.

“Q. Would you say that hop vines would make as deep a root under any conditions as an alfalfa plant would make in 15 months?

“A. No, I think they would not.

“Q. So you would assume, then, that if the presence of

alkali prevented the hops from thriving, that the alfalfa roots have before this reached a sufficient depth to come in contact with the alkali, wouldn't you?

"A. They might have and they might not.

"Q. But nevertheless, you condemn the land?

"A. I don't condemn the land, Mr. McCutchen. Land that is worth \$200 an acre is not poor land.

"Q. But on the land right alongside of it you placed a valuation of \$400 an acre, did you not? A. I did.

"Q. And on the other side of it you place a valuation of \$500, do you not?

"A. Across the creek from it.

"Q. What is the difference between the two soils in texture, that is, the \$200 an acre land and the \$500 an acre land across the creek?

"A. The land south of the creek is a light loam, a light, rich loam. The land north of the creek is a dark heavy clay loam, different texture.

"Q. What is the \$400 an acre land in the hop yard holding, I mean so far as texture of soil is concerned?

"A. It is a clay loam, a light, clay loam, not as heavy as the loam west of the tract; the further west you go you get darker loam.

"Q. That is to say, darker in color?

"A. Darker in color."

* * * * *

(2164) "THE MASTER: Q. Where is the 99.74 acres of \$400 land?

"A. It is right in this place that I am describing, your Honor.

"Q. That is, it is this triangle between the creek and County Road 2578? A. Yes, sir.

"MR. MCCUTCHEN: Q. What kind of land is that?

"A. That is a light clay loam, and in some places near the creek inclined to be a sandy loam.

"Q. Do I understand you to be of the opinion that what you call a sandy loam is better than a clay loam?

"A. Yes, I consider that it is.

"Q. You mean by that that the soil has a good deal of sand in it, do you?

"A. It is lighter in color and don't bake down as hard, it don't pack as hard, it stays up, it is light; there is enough sand in it to keep it from packing down like the clay loam will and get hard.

"Q. The more sand that you have in the soil the less its tendency would be to bake, would it not?

"A. Yes, it is a fine silty sand that is in this sandy loam, a rich fine silty sand that don't bake as readily as a clay loam will bake.

"Q. Is it not a fact that what you call a clay loam with proper tillage, has much greater productivity than what you call a sandy loam? A. No, I don't think it has.

(2165) "Q. Do you know from actual experience whether it has, or has not?

"A. Yes, I do; I know from actual experience that it has not.

"Q. Do you call this clay loam a very productive land?

"A. No, I consider the sandy loam the best land to produce crops."

I will show your Honor later on when I come to refer to his notes that he said that this 99-acre tract was good vegetable land; he has said repeatedly that land, to produce vegetables, must be exceedingly fine land.

"Q. It is not the sand that produces the crops, is it?

"A. No, it is a rich silt that is in the sand.

"Q. What is there that makes the difference or accounts for the difference in the character of the soil north of Black Avenue and south of Black Avenue?

"A. Well, south, or I should say southeast of Black Avenue is the portion I describe as being the best of that tract. It

makes the difference in the portion east from the portion west, there is a streak of alkali in that land between Black Avenue and Valley Avenue.

“Q. How wide a streak?

“A. It covers quite an area toward the extreme westerly and southerly end of the tract; in fact, it is visible along the line of U-268 I would say from about halfway between the County Road and Rose Avenue, from there to the corner of the land, in all that subdivision on that westerly side of the tract and coming in between Black Avenue and Valley Avenue again, again it is visible there in several places.

“Q. That is, you can see it now?

“A. Yes, you can notice it there on the ground. You can see where the alfalfa is not as rich or as green in some places as it is in others.

“Q. When did you see it?

“A. I was in there on last Wednesday.”

Now, that will be interesting when put alongside the testimony of Mr. Parsons. And it is important, your Honor, as showing that the witness was testifying to the then value of the land. It is true these values were made as of the 31st of December, 1913, and Mr. Callaghan wanted us to understand that conditions had not changed. He was there, he says, last Wednesday.

“Q. Is that all planted to alfalfa, all of that tract north and east of Black Avenue?

“A. Yes, that is all planted to alfalfa. There is a portion that is between the hop houses and Black Avenue that looks like it has been planted this last year. (2166) There are considerable weeds growing up there now and amongst the weeds there is occasionally some alfalfa.”

Now, it is exceedingly interesting to know that Mr. Parsons came here shortly after this witness had testified and said that he had just made a trip down there, and he undoubtedly made the trip with Callaghan, and he was prepared to double his

price on that 200 acres on account of the very good yield of alfalfa on the land.

The witness continues:

"You cannot tell very well on the ground today whether there has been a crop planted there, or not, but there is some alfalfa there on the east side of that road.

"Q. How large an area is that?

"A. There must be in there 40 or 50 acres of that land where the weeds are very high over it.

"Q. Is there any portion of that alfalfa that is poor?

"A. Yes, there is a portion of it down there on the west of Black Avenue toward the line of U-268 that is not very good.

"Q. How much of that is there?

"A. 10 or 15 acres in there don't seem to produce any crops; it is dried out in places and a failure in places.

"Q. That is to say, the crop never took root?

"A. If it did take root it died out since. I think some of it did take root and died out since.

"Q. Do you know whether that was from lack of moisture or from some other cause?

"A. There are some gravel streaks in through there that have a tendency to lessen the production of alfalfa in that area.

"Q. Have you ever seen alfalfa growing on gravelly soil?

"A. Yes, I have.

"Q. Where?

"A. Around Livermore, in some of those gravelly soils they planted some alfalfa.

"Q. Have you ever seen it grow elsewhere on gravelly soil, on sandy soil?

"A. Sandy soil and gravelly soil are two different things. Good yields of alfalfa can be gotten off sandy soil with plenty of water.

"Q. But not from gravelly soil?

"A. No. As a rule gravelly soil is not good soil for alfalfa to make a yield off of.

(2167) "Q. Do you know anything about the land in the Orland project? You say you have been up in that part of the country.

"A. No, I never looked into that very much.

"Q. Did you ever go there?

"A. No, I did not; I know the general location of the country and I have passed through there but not to make any examination.

"Q. Do you know whether that is a gravelly soil?

"A. No, I do not.

"Q. Of Tract O-268, lying north and east of Black Avenue, how much of it fails to show thrifty crops now?

"A. None of that that is lying north and east of Black Avenue fails to show thrifty crops except it may be a little portion along about where the word 'Black' is on the map there. On the easterly side of that avenue there it shows considerable weeds growing.

"Q. When I say 'north and east' I mean all of this portion lying above Black Avenue, what portion fails to show thrifty crops now?

"A. Just the 15 acres that I mentioned in this corner close to the word 'Black' and down toward the line of O-268 does not show a very thrifty crop now; there are some areas through it that shows it to be not as heavy or as healthy a growth of alfalfa as other areas. In some places you will find big rich green alfalfa growing on it and then again in between there you will find an area where it is not so green, so rich or so healthy looking.

"Q. And that may all be due to the fact that the last irrigation of the land was a faulty irrigation, may it not?

"A. Not altogether, no.

"Q. May not the condition which you have just described be due entirely to the fact that the last irrigation of the (2168) land was a faulty irrigation?

"A. No, I would not say in all cases.

"Q. What did you find there that indicated that that might not have been due to the fact that the last irrigation was a faulty irrigation?

"A. I looked into that this way: I went and examined to see if the light crops were growing on the higher elevations or if they were found in the lower elevations, and I found that there was no difference in the elevation where I found the lighter crops from the heavier crops, so naturally if the irrigation had been to blame for it one portion on an equal elevation with another would have shown as good results."

It is not of any importance, but that is a statement that indicates that the witness does not know anything about the irrigation of land. Now, I don't claim to know much about it, but our common sense tells us that you might turn a head of water on land and it might very well reach some of the land, but not reach all of it, although to the eye it appeared to be level. To say that he found land that had thrifty alfalfa growing upon it, and other land lying alongside of it that did not have thrifty alfalfa, might be quite true, but to say that for that reason—because the elevation of the two pieces appeared to be the same—that it could not have been due to faulty irrigation, is a ridiculous statement for a man to make who claims to know anything about the irrigation of alfalfa. As I say, I do not claim to know anything about it, but that is not common sense.

"A. (continuing) I could not reason why the water would not go over these areas as well as it would go over the rich and green areas; in fact, I found one or two places where it was lower than where the good green looking crops were growing. That is the reason I did not conclude that the apparent failure in those spots was due to a faulty irrigation.

"Q. What was that land producing per acre in alfalfa at the time you examined it last Wednesday; that is to say, what would you estimate the crop to yield per acre per cutting?

“A. Well, taking it all in all there is a very good crop of alfalfa there and I would think it would yield probably a ton to the acre or better.

“Q. At each cutting? A. At each cutting.

“Q. How much better, if any? A. Well, I could not go into it any closer than that, but I would say a good ton to the acre.

“Q. For the entire tract above Black Avenue?

“A. Yes, for the entire tract.

“Q. And yet you say that the land is only worth \$200 an acre?

“A. That is all, Mr. McCutchen, because there is a menace there that may come up and injure your crop some day or other.

(2169) “Q. In your experience where have you ever known of a crop rooting and thriving as that has for the time it has been planted being injured by alkaline later on?

“A. I cannot recall at the present time anywhere that I have known a crop like that has been injured by alkaline later on, but I do know that the alkali that was visible there in 1914, if it was again returned to the surface of that land that crop will be injured by it, and it will not produce a good yield of alfalfa.”

Callaghan's Experience as an Orchardist.

I had something to say yesterday about Mr. Callaghan's readiness to claim ability to express an opinion upon every branch of agriculture and I suggested that it was rather remarkable in view of that that he seemed to be so entirely unable to give anything like an intelligent opinion, or indeed any opinion at all, with reference to the inability of men who had attempted to grow orchards in the Livermore district to make a success. Now, I don't regard that as of very much importance except as bearing upon his readiness to express an opinion upon every branch of agriculture. I quote from page 2022:

(2022) “Q. How do you account for the fact that other fruits are not grown in that locality?

“A. You mean around Livermore?

"Q. Yes. A. Livermore has never been famous for fruit; they don't seem to do very well there, that is, ordinarily. You will find an orchard of apricots or a few peach trees but they have not gone into the orchard business around Livermore.

"Q. Is that due to climatic conditions or to soil conditions?

"A. I could not tell you. I know that Mr. Hatch and Mr. Smith went into business there some 20 years ago and apparently did not make a success of it.

"Q. You said yesterday that practically they went broke?

"A. I think that Mr. Hatch practically went broke in the fruit business in Livermore.

(2023) "Q. You are more familiar with that territory, Mr. Callaghan than you are with any other in California, aren't you?

"A. Yes, I think that is correct.

"Q. Can't you give us an opinion as to whether that failure was due to soil conditions or to climatic conditions?

"A. My opinion is it was due to soil conditions."

Now, that is important because he has told us on many occasions how superior the soil about Livermore was to the soil around Calaveras.

"Q. In other words, you think the soil was too poor?

"A. Not exactly too poor; the soil and the climate combined may have had something to do with it. The difficulty there that presents itself to me most forcibly is that after a few years when an orchard gets going the bark on the tree will crack and a resin will come out and that will run down and cause a defect in the growth of the trunk of the tree and then borers commence in there. That might be remedied by a spray, or something like that, but that never has been done. There are a great many ways of taking care of pests in orchards now that Mr. Hatch didn't know anything about 20 years ago; perhaps the difficulties they encountered could be overcome now and better results obtained than they obtained. I could not say whether it was due to soil conditions or to climatic conditions."

Hill Lands of Calaveras—Vineyards.

Callaghan told us repeatedly that by looking at a soil he could tell what it would produce. He told us of the soil on some property in the Livermore region which was purchased by a man named Holmes, and he said, at page 1946 (Ab. 539): "The Calaveras hills won't produce as good grapes as the Holmes land. I know from experience that it won't. I have had 20 years' experience in looking over land all over California, in every locality. You don't need to have absolute experience to know what land will produce. * * * * * As a possible maximum the vineyard in the Calaveras Valley might produce four tons of grapes to the acre. I don't hardly think it would. I think 3½ tons would be a good crop for that vineyard, and I doubt if it would do that."

Now here is another evidence of the willingness of the witness to express an opinion upon a subject with reference to which he has no information or experience:

"The lighter tonnage of the Livermore vineyards commands the highest price. The grapes that grow on these light soils out near Cresta Blanca command the highest price. They produce a ton and a half to three tons per acre."

From page 1944:

"Q. You stated that vines which you saw at the southern end of Calaveras Valley were very thrifty, didn't you?

"A. They looked good to me.

"Q. Do you know whether they produced as many tons of grapes to the acre as the lands on the hills around Livermore?

"A. I didn't make any inquiry as to the number of tons per acre they would produce."

* * * * *

(1945) "Q. What enables you to say that this land on the slopes of the hills around Calaveras would not produce just as good (1946) grapes as this Holmes land that you have spoken of?

"A. Well, it won't

“Q. How do you know? A. From my experience, I know.

“Q. What experience have you had that enables you to compare the two sections?”

And then we got back to the same old answer:

“A. I have had 20 years experience in looking at land all over California, every locality.

“Q. Now, Mr. Callaghan, do you mean to say you have had any experience in determining whether Calaveras land will grow grapes successfully? A. You don't need to have absolute experience to know what land will produce.

“Q. Well, do you say that it will not produce grapes successfully? A. It will not produce grapes as successfully as Livermore will, I can assure you of that.

“Q. What will the Livermore land produce per acre?

“A. It will produce money.

“Q. It grows money, does it?

“A. No, not exactly that; the lighter tonnage of the Livermore vineyards commands the highest price; the grapes that grow on these light soils out toward Cresta Blanca command the highest price.

“Q. What do they produce per acre, those light soils?

“A. Oh, a ton and a half to three tons per acre, those light soils will produce.

“Q. How much per acre will this vineyard that I have referred you to in Calaveras Valley produce?

“A. As a possible maximum that vineyard might produce 4 tons of grapes to the acre—I don't hardly think it would, no; I think 3½ tons would be a very big crop per acre for that vineyard; I doubt if it will do that.

“Q. I show you a photograph of a grape arbor; does that indicate a pretty good growth of vines? A. Yes, it does.

“Q. Did you go upon that vineyard to which I have called (1947) your attention. A. I passed along the road there.

“Q. Did you see that grape arbor?

“A. I didn’t go out through the vineyards; I noticed an arbor there by the house, where the winery is.

“MR. McCUTCHEN: I will introduce these later.

“Q. Do you know from any information that you have or from any investigation that you made whether there is any part of that hill land sloping toward Calaveras Valley and which is topographically in a condition to be tilled which will not produce as good grapes as the vineyard to which I have called your attention?

“A. The hills will produce grapes but nobody ever tried them successfully except in that one instance.”

Your Honor remembers a prune orchard on the westerly slope of the valley and only a short distance from the Patton place, the orchard being upon a property which was called the Jeffery Cullen place. Callaghan on direct examination had told about what these hill lands were adapted to. On cross-examination I asked him about this Jeffery Cullen orchard and he said, at page 1883, that he made a mental note of the existence of the Jeffery Cullen orchard when he went over that country.

(1882) “* * * I take it for granted that the Jeffery Cullen orchard, although I have not examined it, it is an ordinary orchard. * * * I could pick out other spots owned by the Spring Valley Company equally as good and fertile for orchards as that spot in the Jeffery Cullen place is.”

Now, this also by itself is of comparatively little importance but it is another straw which to my way of thinking tends to support and strongly supports the claim I have made that this witness approached the consideration of these properties in a prejudiced and unfriendly state of mind.

(1947) “Q. Mr. Callaghan, you testified that there was an orchard on the Patton place; do you remember it well?

“A. Yes sir.

“Q. Did you go into the orchard to see whether it bore any fruit? A. I did.

"Q. Did you find any fruit there?

"A. It bears some fruit, yes.

"Q. What sort of fruit? A. Different varieties of trees.

"Q. There is a general orchard there, is there not?

"A. Yes sir.

"Q. Did you find some prune trees there?

"A. Yes, I think there are some prune trees there. The last time I was up there it was in the month of—it was in the springtime and the fruit was not ripe. I didn't eat any of it.

"Q. When you were there last was the fruit ripe?

"A. No, it was not ripe at that time.

"Q. From your inspection of that orchard you would say it had been neglected for many years, wouldn't you?

"A. It had not been cultivated for a year or two.

"Q. Did you see any evidence that it had been cultivated within ten years? A. I should say it had been cultivated within ten years, yes.

(1948) "Q. Wasn't the ground around the trees very hard?

"A. Yes, the ground is all very hard there."

Now, I want to call your attention to that in connection with an answer he makes later on:

"Q. Though the trees were alive and thrifty, weren't they?

"A. Yes, but a similar acreage of trees was entirely dead on the other tract below there."

I will call your attention to that later; that is the Auctioneer Bland place.

"Q. Which other tract?

"A. The 79 acres that run up Calaveras Creek.

"Q. On which holding?

"A. I have it on the Santa Clara map showing that it belongs to some bank in San Jose. It is A-345, 79.33 acres.

"Q. Isn't there a second small orchard on the Patton place?

"A. I don't remember seeing it.

"Q. How does the Patton place so far as the texture of soil is concerned compare with the Jeffery Cullen place?

"A. The soil is better on the Cullen place but there is more of it covered with brush and more of it they use up with these steep ravines."

He thought for the moment that I was talking about the Cullen place which the Spring Valley Water Company had purchased, and he said then that the soil on the Cullen place, that is to say, that Cullen owned, was better than the Patton place:

"Q. On the Cullen place? A. Yes.

"Q. I am speaking of the Jeffery Cullen place now?

"A. Oh, the Jeffery Cullen place. I though you were talking about the Dennis Cullen place. The soil is better on the Jeffery Cullen place there.

"Q. How do you know? A. It has more depth to it."—

This soil that he never had seen.

At page 1958 (Ab. 542-3) he said:

"I know that grapes will apparently thrive on the hillsides. On the Jeffery Cullen place, which slopes towards the Calaveras Valley, there is a thrifty orchard. The west slopes from the valley might produce equally thrifty vineyards and equally thrifty orchards, but it would be an experiment. The experiments already made have not been demonstrated to my mind successfully. The demonstration has not been complete. I would want to see one entire tract of 60 or 75 or 100 acres planted to fruit trees and see the results before I would be satisfied that a success could be made of raising fruit trees in that locality. If it had been demonstrated in a particular piece of land that fruit could be grown successfully it would improve my opinion of the remaining land of a similar nature. I don't think though the percentage would be very great, * * * * *. * * * If it was demonstrated to me that those hills could be successfully cultivated to prunes, apricots, almonds, I would increase the value of

my \$35 lands and I think the owner would be entitled to more money for them. * * * Speaking hurriedly on the subject, the increase would probably be 10, 15 or 20 per cent; that is to say, \$38.50 to \$42 or \$43. I do not know of any land in California suitable for fruit production that you can buy for \$45 an acre."

MR. SEARLS: Is that the abstract you are reading now, Mr. McCutchen?

MR. McCUTCHEN: No, I think it is my own abbreviation of the record, Mr. Searls.

(1963) "321 is a pretty good piece of land; it will grow fruit as successfully as that patch on the Patton place, and better;"—

It might be well to bear this in mind in view of Mr. Parson's later characterization of the hill lands of 321. Now, listen to the tone of the witness:

"But you could not convince me that fruit could be grown successfully at a profit in any of those places."

I will just go back for a moment now to page 1947:

"Q. How does the Patton place so far as the texture of soil is concerned compare with the Jeffery Cullen place?

"A. The soil is better on the Jeffery Cullen place there.

"Q. How do you know? A. It has more depth to it."

And at 1963 (Ab. 543):

"321 is a pretty good piece of land. It will grow fruit as successfully as that patch on the Patton place, and better, but you could not convince me that fruit could be grown successfully at a profit in any of those places."

At page 2130, which is about 200 pages further on, he says:

"Q. How deep is the soil in the two places where the orchards are on the Patton place?

"A. That is good, deep soil there."

* * * * *

(Ab. 543; Tr. 1960) "I did get up to \$50 an acre on the Brandt-Hansen place. If it had been demonstrated to my satis-

faction that fruit could be successfully grown there, 100 acres in the Brandt-Hansen place would be worth \$100 per acre."

* * * * *

(Ab. 544; Tr. 1964) "I have a general knowledge of peaches, plums, prunes, apricots, almonds and walnut crops."

That is interesting because a little later on with reference to the Hadsell property I asked him about the yield of walnuts and he knew nothing about it, and I asked him about the value of the walnut orchard and he expressed his inability to express any opinion about it. It is perfectly apparent that that was another attempt to assume a virtue which he did not possess.

(Ab. 544; Tr. 1964) "I am not prepared to express an opinion as to what a good yield of apricots, peaches or plums per acre is."

And yet he had no hesitation in saying that if this Brandt-Hansen property were good fruit land it would only be worth so much money.

(Ab. 544; Tr. 1964) "When I say that I know that fruit could not be made to pay on these hills, it is based on my experience"—

And we come back to the same old thing, to this experience that does not exist.

(Ab. 544; Tr. 1964-5) "I look at the hills and at the lands, and at the orchards that grow there, and I know other orchards in other localities, and I can tell a successful thrifty orchard by looking at it, but the actual production per ton per acre I am not enough familiar with fruit raising to answer those questions intelligently."

And orchardist who cannot answer those questions intelligently does not know much about the orchard business, because that is at the very foundation of the business.

(Ab. 544; Tr. 1967) "I would not expect the acreage acquired by the company in 1875 to be planted to fruit after acquisition, but the numerous small farmers who settled in there should have

made more effort to raise fruit than they did if it was a good place to raise fruit. I take it from that that it was not a good place to raise fruit." (Previously he said he took it from his knowledge of the soil.) "The small farmers that were in there were not all stock farmers."

At page 2024 (Ab. 560) he said:

"It is my recollection that there were some almond trees in the Patton orchard which were in bloom, and apparently thrifty when I saw them."

Now, I submit that it is a safe wager that if this man were put down in an orchard he could not tell an almond tree from a peach tree. I believe that statement is conservative.

"Almonds are the earliest bloomers, and if it could be shown to me that the almonds are not affected by frost for a period of four or five years, I would say that the climatic conditions in Calaveras were very mild. If almonds could be produced successfully without being affected by frost conditions, it would be quite a tribute to the climatic conditions of that territory. Assuming that to be the case, it would also have an effect upon the production of alfalfa."

Now, I don't know how much your Honor from your general reading knows about alfalfa culture, but the veriest tyro, the man who has read simply to inform himself generally about those things, knows that it is warm nights that produce an abundant alfalfa crop and that the early spring frosts or the late fall frosts have very little if anything to do with it. In the San Joaquin Valley, where Mr. Callaghan says the greatest yields of alfalfa are produced, the production is largely due to warm nights. Everybody who knows anything about the San Joaquin Valley knows that frosts come there earlier in the fall and appear later in the spring than they do in this territory around the Bay of San Francisco.

MR. SEARLS: Is that in the record, Mr. McCutchen?

MR. McCUTCHEN: No, Mr. Searls, but I say that that is a

matter of general information. We are not compelled to go to Mr. Callaghan for that.

He was asked to tell how many orchards he discovered or found in Calaveras Valley and on the slopes or hills leading into the valley, and he says, at page 2126:

“There are two orchards in the floor of the valley, proper; there are the remains of an orchard on Pomeroy Creek; there are the remains of an orchard on A-345; there is an orchard on the Patton place—

“Q. I believe you said there was only one orchard on the Patton place.

“A. There are scattered trees. There is an orchard up the road, as you come up the road, and then there are a few trees up around the house. There is an orchard on the Jeffery Cullen place—

“Q. But I am speaking now of the company's property.

“A. There are a few fruit trees on the Priesker place, only a few fruit trees; there are scattered trees in differnt places; fruit trees in different places throughout.

(2127) “Q. That holding, then,—what you describe as farm land sloping toward the valley and the floor of the valley—is pretty well dotted with orchards, isn't it?

“A. Yes; on nearly every ranch they picked out a particularly good spot of land in which to plant a few fruit trees.

“Q. How do you know that? A. Because I observed that where the fruit trees are planted is generally the best part of the ranch.

“Q. You say, in this report made by you to the City Attorney with reference to section 6”—and this is the Auctioneer Bland place—“The northwest quarter traversed by Calaveras Creek in the southerly end of Calaveras Valley, some gravelly creek bottom, benches suitable for cultivation; there has been a vineyard and an orchard planted on this tract, but results appear to have been very unsatisfactory'; from your inspection of that,

when did it appear that that vineyard and that orchard had been cultivated?

“A. Well, it appeared it had not been cultivated for some time when I saw it.

“Q. Ten years? A. Ten years.

“Q. Or more? A. It might be ten years or more.

“Q. What did you see there that warranted you in stating that the results had been unsatisfactory?”

His notes said, “The results appear to have been unsatisfactory.” Now, listen to this answer:

“A. I saw there that these trees had been planted for some time, and had been in bearing before the former owner had disposed of the land, but that they had not made any very good growth, the trees had not grown large, it had not been a prosperous looking orchard at the time it was sold; in other words, it seemed to me that the farmer who owned that place had planted those trees and given them his care and attention and brought them into bearing, but had not got good results from them before cultivation ceased there; and the same thing in regard to the vines.

(2128) “Q. Do you claim to have such knowledge of fruit growing as will enable you to state anything of that kind with accuracy?

“A. From my general observation of fruit trees, I would say that I would have a general knowledge sufficient to say whether an orchard was thriving and successful, or not.

“Q. You don’t think it is possible that those trees could have been thrifty while cared for, but had gone back when they ceased to be cared for?

“A. I would think that if they had been in that condition and had been thrifty they would have shown a larger growth of trunk or a larger growth of branches.

“Q. How do you know at what age they ceased to be taken care of?

“A. From my judgment in looking at the trees, it seemed

they had been bearing for some years before they ceased taking care of them.

“Q. How old are the trees? A. I could not tell you that.

“Q. How much of a growth had they attained when they ceased to be cultivated?

“A. Well I would say they did not seem to be well nourished or well developed at the time. I don't know how much growth they had attained.

“Q. Do you undertake to say that fruit planted on that land where you found those trees would not do well if it received proper cultivation?

“A. Yes, it is my opinion that unless on very limited areas—

“Q. I am speaking now of that particular tract.

“A. Yes, I would say that fruit would not do well on that particular tract; it is not a soil fitted for fruit.

“Q. What sort of a soil is it? A. It is kind of a red soil, a light red soil. It bakes very quickly after a rain.

“Q. How deep is it where those trees are planted?

“A. On the side of that hill, on the bench there, there may be three, or four, or five inches of soil in there.

(2129) “This light red soil hardens something similar to cement soil—cement.”

Think of a farmer planting an orchard where the soil was only three, or four, or five inches deep.

The witness described that land as traversed by Calaveras Creek in the south end of Calaveras Valley, some gravelly creek bottom, benches suitable for cultivation; and that it has been in vineyard and orchard and that the results seem to have been indifferent. He valued it at \$35 per acre.

I am reminded that when he was asked to compare that land with the Brandt-Hansen land, that instead of saying, “Well, I may have made a mistake and gotten the Brandt-Hansen land too low,” his answer was, “I have made a mistake and gotten the Auctioneer Bland place too high.” And it so happens that

his side-partner, who worked independently and did not care for Callaghan's valuation also got the Auctioneer Bland place too high. And the same with reference to the Santos place. When they were asked to compare the Santos place with the Weller place, they said, "We haven't got the Weller place too low, but it is very apparent we have the Santos place too high," and Mr. Parsons inadvertently fell into the same error, and as Mr. Greene suggests, to the same extent.

"The value of that is \$35 per acre. The westerly bank of Calaveras Creek is where those benches are located. Then there is an area east of the Creek up toward the Carrick place that is fit for cultivation; also you get further south in that tract of land going toward h-268 and you get into a ravine there that is pretty brushy; there was a vineyard on that part west of the creek up there at one time; the remains of it are there yet, there are some fruit trees remaining there yet on the ground."

Professor Wickson on Calaveras Valley for Fruit Growing.

After listening to Mr. Callaghan—the orchardist who has never had an orchard, never planted a fruit tree, who admittedly does not know what is a fair yield to the acre for any sort of fruit, and who, I firmly believe, if set down in an orchard would not be able to tell the difference between a peach tree and an almond tree—it is interesting to hear what Professor Wickson has to say about these lands and their availability for fruit growing. And before I come to that—and this does not apply to the hill lands—I want you to bear in mind that in the notes of Callaghan and in the notes of Parsons with reference to the Calaveras Valley, that is to say, the floor of the valley, you will look in vain for any commendation of the land which has been demonstrated to be excellent for the production of prunes and other fruit crops. And, by the way, when Callaghan was on the stand he told us to wait until Parsons came along, and he would tell us something about fruit. But, with those object

lessons staring Parsons in the face, with the trees teeming with fruit, you will look in his notes in vain for any suggestion that the lands are adapted to fruit culture. On the contrary, he says those lands on the floor of the valley are hay and grain lands. If Callaghan had known anything about fruit it would have been an unfair characterization or designation of those lands on the floor of the valley to say that they were hay and grain lands; but Parsons did claim to know something about fruit, and if he did, he was manifestly unfair when, negatively at any rate, he condemned the lands on the floor of the valley for fruit culture. But now let us see what Professor Wickson has to say (4140):

“Q. Will you state particularly whether, in your opinion, fruits can be grown successfully in Calaveras Valley, and if so, what fruits?”

Now, is this an obvious answer to the men who have seen the locality?

“A. Well, as a matter of fact, fruits are grown successfully there at the present time. That is the first thing I looked for, the condition and behavior of trees that have been growing there for a considerable time.

“Q. Did they indicate that the soil and the climate were suitable for the growing of fruit trees? A. They certainly did, for those particular kinds of fruit that were seen.

“Q. What were they? A. The trees that were in fruit at the time of my visit in the first week of September were pears, apples, plums, prunes and grapes.

“Q. Did you go over the hill land as well as the valley land?

“A. We made a circuit of the valley and then went up onto the slopes on the south and west, as I remember the points of the compass, and on the southeast, also.

“Q. What is your opinion as to the availability of those hill lands for fruit culture? A. They are available for fruit land; at least, up to the elevation that they have now been used for grain and hay, and probably considerably higher. The common

experience is in using hill lands that after they take to planting fruit, they generally go higher than the previous line of cultivation for hay."

That is in accordance with the observation of every man who looks about him when he travels through this state. If you will go out in the Los Gatos country, if you will go down the valley of Santa Clara and look on either side, you will find that the orchards and vineyards reach very much higher than the cultivation ever did for hay and grain.

"Q. Did you find any old orchards on the property of the company? A. We found a number of old orchards, some trees that were much older than the commercial planting, some trees that were at least 30 or 40 years old; some considerable acreage of trees that were over 20 years of age—(4141) the latter were in bearing; some of the very old trees were also bearing well.

"Q. Did you find any orchards or vineyards on that slope?

"A. On the slope south and southwest?

"Q. I mean on the land sloping into the valley?

"A. We found both orchards and vineyards.

"Q. In what condition were they?

"A. Some of the vineyards on the steep slopes were going back; I didn't make any examination to determine whether it was phylloxera, or perhaps it had been neglected. There was one vineyard in very fine condition, said to be seven years old; it was very thrifty, and it had been well taken care of.

"Q. That was well down toward the southern end of the land that slopes into the valley, was it? A. Yes.

"Q. Is that the vineyard that is on both sides of the road as you go south?

"A. As I remember it, the seven-acre vineyard was mostly on the right hand side of the road, and the residence was on the left.

"MR. SEARLS: He is referring to the Priesker place, isn't he?

"MR. McCUTCHEN: No, he is referring to the Frenchman place.

"A. Yes; I know it is a French name. I am not sure whether all of the vineyard is on the right hand side, but it is largely on the right hand side.

"THE MASTER: Is that where we took lunch?

"MR. McCUTCHEN: Yes, your Honor.

"THE MASTER: Q. And that was near the top of the ridge?

"A. Yes, it was pretty well up.

"MR. McCUTCHEN: Q. Did you find a prune orchard in that same locality and before reaching the vineyard?

"A. Before we came to the vineyard and on the same road, yes; we passed that twice.

"Q. Did you go into that orchard?

(4142) "A. No, that orchard was right near the road, and we stopped and took a look at it.

"Q. Was that thrifty?"

Bear in mind the difference in tone between his expression and the expression of Mr. Callaghan.

"A. Yes; of course, the trees were not as large as one would find down in a valley situation; but it was a good hill orchard.

"Q. From the conditions you found there, were you able to form any impression as to the suitability of the climatic conditions for the growing of fruit?

"A. Well, we found that demonstrated for fruit trees by what we actually saw growing there; that was the best possible evidence. We saw a large range of thrifty trees, including those I have mentioned, and apricots and almonds; I concluded from what I saw that the land was certainly adapted for all kinds of deciduous fruits which are commonly grown; there was also a citrus orchard, but I think not in the same district.

"Q. Did you form any opinion, Professor, as to the availability of those lands and the adaptability of them for the growing of vegetables?

“A. I would have no hesitation in saying that they were in many cases adapted to growing vegetables. I don’t remember seeing any vegetables on the land immediately in the valley, or immediately surrounding it.”

We went through that valley, we saw those orchards, we saw those trees on the Campbell place which Parsons attempted to damn by faint praise, making the suggestion that they had probably been grafted onto some resistant root. We saw trees that were 12 or 14 inches in diameter, and that were fine, thrifty-looking trees. As Professor Wickson intimates, we don’t need anybody to tell us that land that will produce trees like that is adapted to fruit culture. And, as I say, that was not the purpose alone in calling Professor Wickson here. He knew what he was talking about; he has devoted his life to agriculture. The purpose was to put on record the statement of a man who knew that these things were most obvious and ought to be most obvious, even to a man who did not have any technical training. On the other hand, we have Callaghan, who claims to know all about it, and who puts just the reverse picture before us.

MR. SEARLS: How about Mr. Parsons? He is a successful fruit grower.

MR. McCUTCHEN: I will come to Mr. Parsons.

MR. SEARLS: I was afraid you were going to neglect him.

MR. McCUTCHEN: I will take the time now, Mr. Searls, inasmuch as you have asked me about Mr. Parsons. I would like you, Mr. Searls, to tell us, when you come to present your side of the case, what you think of a man who will say that if you took a lot of soil and put it in a box and impregnated it with alkali to the extent that it would destroy plant life, and then put some manure in it, that the manure would overcome the alkali. I would like you to tell us what you think of a farmer who would make that statement? And I would also like you to tell us what you think of the value of a man’s opinion who, after devoting the time to this property that Parsons says he

devoted, would come upon the stand here and tell his Honor that 200 acres of O-268 was only worth \$200 an acre, and on his cross-examination, after he knew that his Honor had been to the land and had seen the growth upon it, would come back and say that in one short year the droppings from Heath's cows had made that land, which at the beginning of the summer before, was worth \$40,000 now worth \$80,000. I would like to have you tell us what you think of the value of the opinion of a man who will make that sort of an exhibition of himself. And while I am upon that subject—and it is a little out of order—I have often thought since that testimony was given what wonderful animals those Heath cows must have been, and I have thought what a pity it was that Means did not discover that particular herd. If he had, he could have saved that ill-fated Solano enterprise from bankruptcy and scandal, because in that case the cow that was maintained upon the one acre of alfalfa would not simply have produced the calf and a hundred pounds of butter fat annually, and the manure would not simply have been a by-product, but the manure would have been the principal source of profit. It is clear from Mr. Parson's statement that, as I say, the cow would not simply have given to the owner the calf and the 100 pounds of butter fat, but the droppings of the cow upon the acre of land upon which she grazed would have made it worth \$200 more at the end of the year than it was at the beginning of the year. Why, if his Honor could borrow one of those cows and tie her on his lawn over night, he would be relieved from fertilization expense for a generation. But, seriously, now, that is what I think of Mr. Parsons. The most charitable thing that can be said of Mr. Parsons—and I have no disposition to say anything unkind of him—is that he is a dodo, he is a banker among farmers and a farmer among bankers.

Now, getting back to Callaghan and his description of the soil, he says, at page 2000 (Ab. 554):

“There is some good soil on the Brandt-Hansen place. I

cannot call to mind any other place that has got extra good soil on it. It did not strike me as strange at having found all the black loam in the valley and none on the hills, because I know the way that that black loam was made. When this sandstone gets decomposed, gets washed by the waters and drifts into those creeks, and passes over those shales, and is pulverized after traveling these rock bottoms of these creeks and is deposited in those valleys, it becomes good soil."

This is also interesting because he says that the soils on the easterly side of the creek are poorer for the reason that the deposits in the hills on the east side are sandstone.

"I cannot explain the chemical method of doing it, but I know that is the way that these soils must be made, because I know the country west of Calaveras is this kind of land,"—

In other words, the witness was not candid enough to admit that the hills, the washings from which became this rich sand in the valley, must have had some productivity, some fertility in the soils that remained on the hills; he was not willing to admit that.

"—and I have the impression that that is the result of these floods that come down from there. It passes over these shale stones, this sand and clay, and it all gets mixed and forms a soil like you have in the Calaveras Valley. The poor soil on the hill, when washed down and carried along these ravines, becomes good soil in the valley."

I am going back just a moment to remind you that he said that that corn patch, which is just at the bottom of these hills from which this wash comes, was not a black loam, but that it was a clay adobe. And now, quoting from page 2129:

"Q. You have spoken of soil being shallow in certain places in that Calaveras area; just what do you mean in fact when you speak of shallow soil? A. I consider any soil less than ten or twelve inches to bedrock as shallow.

"Q. Where, any place on any of these hill farming lands,

is the soil not more than twelve inches deep?

“A. There are areas on all of those hill farms where the rocks come to the surface.

“Q. And, of course, where rocks come to the surface, there is no soil, is there? A. No.

“Q. Tell us any place where the rocks do not come to the surface where the soil is not more than twelve inches deep?

“A. There are portions of the Priesker place where the rock does not come to the surface and where—

“Q. Where is that, Mr. Callaghan?

“A. On different parts of the Priesker place.

“Q. Did you make any examination to ascertain that?

“A. I walked over and saw it, and I saw the plowing there.

“Q. Did you see any place where they had plowed where the soil was not more than twelve inches deep?

“A. Yes, there are places where they plowed where the soil was not over twelve inches deep.

“Q. When had they plowed?

(2130) “A. I don’t know when they plowed; the remains of the plowing was there when I was looking at it.

“Q. Did you take an implement of any kind, for instance, a stick or a fence rail, or anything of that kind, to ascertain the depth of the soil? A. No, I did not.

“Q. And you cannot tell us any place, or indicate any place to which we could go and find that the soil was not more than twelve inches deep?

“A. Yes, I can take you to several places on the Priesker place and I can take you to some places on the Levy place.

“Q. Can you take us to any other of these holdings where the soil is not more than twelve inches deep?”—

And now see how the witness shifts:

“A. We are confining ourselves to bedrock, are we, or subsoil?

“Q. Yes, take either, take your choice with reference to that.

"A. On the Patton place the sub-soil comes in in less than twelve inches in several places."

The impression which he had intended to convey was that there was a depth of only 12 inches over bedrock.

"Q. At what particular place on the Patton place does the sub-soil come within twelve inches of the surface?"

Now, there was a place, if your Honor please, that had not been cultivated for years, the ground had not been turned over. Just let me interrupt my train of thought here for a moment to suggest that when Mr. Parsons was being cross-examined by Mr. Olney with reference to the Sam Sherman place, he said that the Patton place was a better place than the hill lands of the Sam Sherman place, which was almost level land, that is to say, to all intents and purposes for farming purposes it was level land.

"A. On the ridge southwest of the house you will find a difference; you will find sub-soil in ten inches in some place, and in some places in eight inches, a different soil that becomes a sub-soil."

Now, we all know that that is no reflection upon the soil; that is to say, we all know that sub-soil is not necessarily without nutriment.

"Q. How deep is the soil in the two places where the orchards are on the Patton place?"

I called your attention sometime ago to the fact that when he was comparing the Patton place with the Jeffery Cullen place he stated that the soil on the Jeffery Cullen place was good, deep soil, and better than on the Patton place.

"A. That is good, deep soil there."

Now, the next question:

"Q. How does the land surrounding the Patton orchard compare with the land where the orchard is any different in that place?"

"A. There are areas between the orchard and where the

house stood that is similar soil to the land in the orchard, but where you go south from the house on the ridge, it is entirely different soil."

I do not know whether your Honor remembers that place, or not; you were probably there only once; I was there twice, and I have a very distinct recollection of how things look there. We came from the creek onto a wide bench where there was an orchard; the slope from there up to where the Patton house was was a very gradual slope, and near the Patton house was another orchard. I submit that there is absolutely no warrant for a man throwing out the intimation that between the Patton house and the first orchard encountered there was any change in soil.

"A. There are areas between the orchard and where the house stood that is similar soil to the land in the orchard, but where you go south from the house on the ridge, it is entirely different soil."

MR. SEARLS: Mr. McCutchen, while I think it is entirely proper for you to call his Honor's attention to these matters and to cite your own recollection, of course this is not to be considered as independent testimony on your part.

MR. McCUTCHEN: Mr. Searls, if I call his Honor's attention to something and my recollection of it is entirely at variance with his recollection of it, it will recoil upon my own head.

MR. SEARLS: Of course, I understand that, Mr. McCutchen, and I do not want to be understood as impeaching your recollection, but different people, you understand, might have different ideas about the same thing.

MR. McCUTCHEN: Of course, I am not in Mr. Callaghan's class, Mr. Searls, I am very apt to be mistaken.

"Q. You didn't make any examination to enable you to (2131) ascertain those facts, did you, Mr. Callaghan?

"A. Well, an examination in walking over the land and looking at it, and looking at the growth on the land would

enable me to tell the difference in the character of the soil in the different portions I was going over."

(Ab. 584-5) "I found a considerable growth of oak on the whole property. The presence of oak in those hills is not a criterion. Oak will grow on very poor soil there. I have seen some very good oak trees on rocky soils. I have seen a good growth of oaks where there is not much soil all over the Mt. Day road. They are large oaks. The soil is not very good, fertile soil. I don't know what produces those enormous oaks. They go down into the ground and get their sustenance from something that is not visible around the surface. I cannot describe the action, but they grow there. I do not know—" this witness who knows it all—"that (2132) vegetation of that kind cannot grow excepting in good soil. I cannot account for the fact that oak trees grow in those places where I know the soil is poor. I know that in a good soil an oak tree will grow better and larger than it will in a poor soil."

Callaghan's Comparison of Calaveras with Mocho and Corral Hollow.

I called your Honor's attention to the comparison which this witness had made between the Calaveras range and the Mocho country. I regard that part of his testimony as important, because it affords a concrete example of the value of his opinion; it affords us a foundation which enables us to say whether he is capable—assuming he has been candid,—of making a fair comparison. I quote from page 1968:

"Q. Tell us again the grasses that are produced on those grazing lands.

"A. We will begin with the good ones; alfileria, clover, wild oats, fox-tail, poverty-grass. These are the principal grasses named in the order of their quality.

"Q. To what extent do alfileria and clover grow upon those ranges?

"A. To a very limited extent.

"Q. Do you mean by that that they grow to some extent

upon all of the lands or that there is a line east or west of which they do not grow? A. Are you talking about alfileria?

"Q. Both. A. Alfileria and clover, you will find it all over the lands. You will find alfileria upon the upper end of Section 10; you will find it over on the Beverson quarter on section 36 and down on the Mt. Day ridge road you will find some patches of both alfileria and clover. The areas, though, are so small in comparison with other large areas that grow the other kinds of feed that it is considered a small part of the feed of the range.

(1969) "Q. Who considers it a small part? A. I do.

"Q. Is it not characteristic of that whole hill country to the east of San Jose that it produces alfileria and burr-clover in great bunches? A. Your characterization of that country was very applicable 20 years ago; them hills over there did produce abundant alfileria and clover about 20 years ago but since that the quality of the feed has changed and alfileria and clover have been dying out and these other grasses have taken their place.

"Q. Is that characteristic of other grazing land in that range, that the alfileria and clover have been dying out and the other grasses have been taking their places?

"A. Yes, that characteristic extends over that entire range on the east of Alameda Creek down toward Sunol. There is not nearly so much alfileria and clover on that range as was on it 20 years ago.

"Q. Now, going to the other side of Calaveras Creek, Mr. Callaghan, and going down toward the Morrow ranch how is it?

"A. There is not as much alfileria and clover there as there was 20 years ago or 15 years ago.

"Q. How old are you, Mr. Callaghan? A. I am 43.

"Q. Were you ever over this particular country 20 years ago?"

Now, mark his answer, your Honor, for he is telling us of conditions that existed 20 years ago, and that do not exist today:

"A. I have been all over the Coast Range hills from Mt. Hamilton clear down to Mt. Diablo, back and forth; I was in back of Mt. Hamilton in 1888—in fact, I had sheep on the Mt. Oso range and in Blackford Valley and Deer Park and over toward Mt. Hamilton and all through that country. I will say I have been over that country 20 years ago and several times since.

"Q. Confine yourself now, if you please, to the territory in (1970) which the lands of the company lie, that is to say, on the opposite side or the lower side of Alameda Creek; were you over that land 20 years ago, any part of it? A. Yes, I was.

"Q. What part of it?

"A. I came down that ridge down on the Story hills and crossed over there; I came over from Byer Creek, and Trout Creek and the Valpe Creek and over into Alameda and over the Alameda ridge and down through that country.

"Q. And you remember that at that time there was a great deal of alfileria over all that range, do you?

"A. Yes sir, I will say there was a great deal. It was a very good range at that time before these other grasses came in there.

"Q. And a great deal of burr-clover at that time?

"A. There were other varieties; there was burr-clover there and there were other varieties of clover too; there was this red top clover.

"Q. Has that all disappeared?

"A. There is hardly any more red top clover in those ranges.

"Q. When were you over the range when those grasses could be easily distinguished, at what season of the year?

"A. Those grasses are easily distinguished, and I was over those ranges about in the months of April, May and June; those are the best times in the year to look over those ranges, they look at their best during those months.

"Q. Tell us where you found alfileria and burr-clover at those times? A. Most anywhere on the tops of the ridges you could find it 20 years ago.

“Q. I am talking about now; when you said you were there in April, May and June, did you mean since you were employed in this case?

“A. Yes, sir, I was there in April, May and June since (1971) I was employed in this case.

“Q. Tell us where you found alfileria and burr-clover and where you failed to find it?

“A. It is very limited on section 30; there is very little of it on 24 or 19; there is some of it up on 31. 32 has a patch around the Bowden and the Fennell places; up on the Mary Williams place on Section 4 there is a nice open slope there that has some alfileria and clover—in patches, not all over it by any means. Going up the road to Section 10 there is some. You follow down through Section 31, the slope into Honda Creek, there are some benches there that grow clover. Then you get no more of it until you get to 34 and 33 and—

“Q. Oh, that is enough for that; tell us the pieces of land you have valued on which you don't get any?

“A. I would say that there is not a section of land up there that some portion of it doesn't grow some of these grasses on it.

“Q. Tell us any land that you have in mind where that growth is scarce?

“A. It is very scarce on Sections 33 and 34 and 29.”

By the way, I am reminded—I don't know whether I have a note of it, or not, but counsel asked me to tell him about Mr. Parsons. I have in mind some testimony of Mr. Parsons with reference to alfileria. I think Mr. Parsons was heralded here as a thoroughly up-to-date farmer and stockman, but he didn't know whether alfileria made a deep root or a shallow root. Think of it, a man who had extensive experience as a farmer and extensive experience as a stockman could not tell us whether the root of alfileria was a deep root or a shallow one.

“Q. Those are all above the snow line, aren't they?

“A. No. 29 is not above the snow line.

"Q. I think those are the sections you said were above the snow line? A. No. 29 is not above the snow line.

"Q. Didn't you say yesterday that it was?

"A. Horseshoe Bend in the creek comes in there on 29.

"Q. Well, go ahead and tell us the other portions of the land you have valued on which no alfileria or clover in appreciable quantities can be found?

"A. There is none on f-268; there is none on u-268 to any extent at all; you would have a hard time to find any over there. There is only one quarter section on all of (1972) Section 16 that grows any alfileria or clover.

"Q. Does it grow that abundantly?

"A. No. There are a lot of wild oats in there too where that big slide came down from the peak there, and in those benches, the wild oats are in there.

"Q. Go ahead with your enumeration of lands on which alfileria and clover do not grow?

"A. There is no alfileria or clover on the northeast $\frac{1}{4}$ of Section 32; that is a portion of p-268. There is very little on Section 2, which is v-268 and x-268. There is none on the northeast $\frac{1}{4}$ of Section 10. There is only one quarter of Section 36 that grows any alfileria and clover to any appreciable extent; the balance of Section 36 has dense brush in toward the Alameda Creek and across the creek.

"Q. Will you tell us the sections where grasses grow profusely and where there are not to be found any alfileria and clover to any appreciable extent?

"A. The sections where grasses grow appreciably and there is not to be found any alfileria or clover to any appreciable extent, the sections where grasses grow profusely will certainly have more alfileria and clover in them than the sections I have just named. You will find some nice alfileria and clover on Section 19, on the slope down toward La Honda Creek but not all over the area. You will find nice patches of clover on Section

13 on both sides of the Mt. Day road as you go up from the dam. You will find some pretty good alfalfa and clover—not so much alfalfa as clover—on Section 24, in a portion of it. Another fairly good pasture section that is there for the area that is open, which is not very much, is Section 14. Section 14 has a nice valley going through there that is open and grows very nice wild oats and other grasses, (1973) there is a lot of section 14 that is west of that road that is covered with brush in those ravines, and very deep and brushy.

“Q. Leave out of consideration for a moment the land that is covered with brush; I ask you now where there is any land that produces grasses abundantly which does not produce a good crop of alfalfa and clover.

“A. I will name as a section that does produce grass abundantly but does not produce any appreciable quantities of alfalfa or clover Section 14. What is open of it is a very good section; I put a valuation of \$15 on it, or a total valuation of \$9,600. After I had done that I said to myself, can you get a man who will come up here and pay \$9,600 for it and go up on those hills and look at that brush? I went over it again and I convinced myself I was right. There are good grasses growing up there but there is very little alfalfa and clover there.

“Q. Is there any other piece of land that produces grasses in abundance but which does not produce alfalfa and clover?

“A. I will say that there is a good deal of grass, wild oats and fox-tail, that grows on Section 30 and there is a limited amount of alfalfa and clover in that section.”

* * * * *

(1974) “Q. If you had found considerable alfalfa and clover on those grazing lands, would you have appraised them at higher figures? A. Yes, I would.

“Q. Did you intend to give the impression that the feed on these ranges was not nutritious?

“A. I did intend to give the impression that the feed on

these ranges was not as nutritious as the feed on the ranges further eastward.

“Q. Did you intend to give the impression that the feed was not nutritious?

“MR. SEARLS: I think he has answered that.

“A. Feed being nutritious, Mr. McCutchen, is only nutritious by comparison with other feed. The only way of arriving at whether feed is nutritious, or not, is by a comparison with other feed on other ranges. It is a known fact to all stockmen, and all stockmen will tell you, that the feed on the ranges west of Arroyo Mocho—

“MR. McCUTCHEN: Q. I am not asking you that, Mr. Callaghan.

“A. I insist upon answering the question, Mr. McCutchen, as long as you have asked it.

“THE MASTER: The question he asked can be answered in a very few words, and then you can explain it at another time; he has simply asked you whether it is nutritious at all, or not.

“A. It certainly has some amount of nutrition in it, otherwise (1975) the land would be worthless; the land would be worthless unless there was some nutrition in it.

“MR. McCUTCHEN: Q. Let me ask you if you recall this testimony: ‘Q. Is there any quantity of alfileria or clover on these ranges?

“‘A. Yes, sir, there are some patches of alfileria and some patches of clover on those ranges, but the predominating feed, as I have said before, on those ranges, is wild oats, fox-tail and poverty-grass. There are areas on those ranges that have produced alfileria and clover.

“‘Q. Taking them as a whole, would you consider the feed on those hills nutritious for cattle? A. Not particularly so, no.’”

Now, I ask your Honor what impression was intended to be conveyed by that answer of the witness? Wasn't that intended

as an unqualified condemnation of that range for grazing cattle? And when I called his attention to this, I said:

“Q. Now, I ask you, did you intend to give the impression that the feed on those ranges, as a whole, was not nutritious to the cattle? A. Not particularly so. That is correct; that is the impression I tried to convey, Mr. McCutchen, that the feed on those ranges was not particularly nutritious in comparison with other ranges that I knew of.

“Q. Did you intend to give the impression that the feed on those ranges would not fatten cattle? A. The feed on those ranges will not fatten cattle in prime condition.

“Q. Will the feed on those ranges fatten cattle fit for butchering?

“A. You can kill anything in the line of cattle, but the quality will not be there in stock fed off those ranges entirely.

“Q. Do you know whether the Western Meat Company, during this present year, bought stock that was grazing on those ranges and sent a large number of those stock immediately to the slaughter houses to be slaughtered?

“A. I know that the Western Meat Company—I heard that the Western Meat Company bought stock off those ranges and slaughtered them. But there are several grades of meat, you must remember.”—

Yes, we do remember that, because Mr. Callaghan told us that some beef he paid 10 cents a pound for.

“There is the high-class article that sells for the high prices in the market, high-class meat (1976) that the best hotels demand; there are other grades of meat sold in the market that do not command such a high price, and that is the quality that comes off the Calaveras range, the kind that is fed with ordinary feed.”

Now, in view of the testimony that this witness gave at another time and to which I called your Honor's attention, this is exceedingly interesting:

"Q. What will a steer add in weight during an average season if allowed to graze on those hill ranges?

"A. That will all depend on the condition of the steer at the time he went on those ranges, and also the condition of the steer as to health and being acclimated.

"Q. Do you mean to be understood as saying that under favorable conditions he would take on more weight?

"A. A great deal more weight than under unfavorable conditions.

"Q. That would be so on any land under the sun, wouldn't it, Mr. Callaghan? A. Yes, it would, Mr. McCutchen.

"Q. Then why do you make that answer as to this land?

"A. Because it was in answer to your question.

"Q. And you consider that a candid answer, do you?

"A. You asked me how much would a steer gain in weight being put on that range and—

"Q. I said under normal conditions.

"A. Under normal conditions on that range, yes, and I said that that would depend upon the condition of the steer at the time he went on there, and also upon the fact as to whether he was healthy and acclimated to the locality he was coming into.

"Q. Well, assume that a steer is put on there at two years of age, that he is healthy, and that he is in fair condition, what percentage will he add to his weight in a year?

"A. Do you mean the year 1913 or the year 1915?

"Q. We will take the average year."

And listen to the answer of this all-knowing stockman:

"A. I don't think I could answer that question, Mr. McCutchen.

"Q. Do I understand you that there is any difference in the (1977) production of alfalfa and clover between this land and the land around Mr. Hamilton, on the Morrow ranch, for instance? A. No, I would not say there is.

“Q. Do you say that there is a scarcity of alfileria and clover on the Morrow range?

“A. From my observation of the Morrow range I would say that it would be about the same quantity of alfileria and clover, I would say about the same quantity would grow on both sides.

“Q. Don’t you know whether Mr. Morrow is in the habit of marketing his cattle for slaughtering directly from his mountain ranges? A. I expect he does.

“Q. And you think that the men who buy his cattle are very poor buyers, I suppose, do you?

“A. No, I don’t think that, at all. I know men who have bought cattle not in prime condition and who made more money on those purchases than men who bought cattle in prime condition.

“Q. Did the man who sold them the cattle also make money?

“A. The man who sold them also made money, because he got them off of his range and off his feed, and it left him the feed for other stock coming in on his range, and he got a fair price for his article.”

* * * * *

(1978) “Q. * * * what do you mean by saying that the feed on those ranges is not particularly nutritious?

“A. Because the fact of the matter is that it is not. It is the truth I am speaking when I say it is not particularly nutritious.”

* * * * *

(1981) “Q. Mr. Parks testified to the receipt of some Mexican cattle that were pastured on these Calaveras lands; did you see any cattle when you were over there? A. Yes, sir, I did.

“Q. Were they in pretty good condition? A. Fair.

“Q. Where were they?

“A. They were on the floor of the valley.

“Q. How long prior to the time you saw them on the floor of the valley had you been there?

“A. I was there about a month prior to the time when I

saw them on the floor of the valley.

“Q. And when did you see them on the floor of the valley?

“A. In the latter part of July I saw them on the floor of the valley.

“Q. When was the hay cut on the floor of the valley, if you know?

“A. During the month of May, the latter part of May, I think some was cut there in the early part of June, possibly.

“Q. Did you assume, as a cattle man, that these cattle could have been in very poor condition when they were put upon that stubble on the floor of the valley?

“A. No, I would assume that they were in fair condition, because this was more than an average year in those hills and the grass was very good. I would assume that those cattle were in very fair condition when they came down to the floor of the valley.

“Q. Would you say prime condition? A. No, I would not.

“Q. Then there are years or seasons when there is sufficient nutrition in the grass on those ranges to put cattle into fair condition, is there?

“A. Yes, there is, emphasizing the words ‘fair condition.’”

So you will see, Mr. Searls, where I get my emphasis.

“Q. Inasmuch as you have emphasized that, will you tell us what the emphasis means?

“A. The emphasis means that my assumption in the beginning was that you could not produce a prime article of beef from the Calaveras Hills.”

At page 1982 the witness's attention was called to his statement that the feed on the hills was not particularly nutritious for cattle and he was asked this question:

“Q. Now you say that what you intended to say was that that feed would not get cattle into prime condition?

“A. That is exactly what I intended to say.”

* * * * *

(1783) (On direct examination).

"A. Sometime in the month of April, or the month of May, you will have a hot spell and the south slopes where the soil is light the grass on them becomes stunted; no matter how much rain follows when the grass is once stunted on the south slopes it never recovers again during the season. It may stay on and keep alive a little bit, but it never recovers even though a rain falls later.

"Q. When you say the south slopes, what do you mean?

"A. I mean the slopes east of the La Honda Creek and north of the La Honda Creek, starting from the creek bottom going east or going north; I mean the slopes sloping southeasterly into the Calaveras Valley from the Marsh road ridge, coming that way. Those are what we call the south slopes.

"Q. In regard to the north slopes to the east of Calaveras, what would you say about them?

(1784) "A. The north slopes are more covered with brush; in fact, in a great many places they are so brushy that very little pasture grows in them. The open glades in the north slopes stay green later in the spring.

"Q. Is that a particular advantage for grazing purposes?

"A. It is.

"Q. How long do they stay open?

"A. Well, I would say you could find green feed in the north slopes from 20 to 30 days later than on the south slopes.

"Q. Is that the greatest length of time you would expect to find it green? A. That would be about the difference in the drying out on both sides of the ridge. That would all depend on the kind of a year you had though."

* * * * *

(1983) "Q. You said that the feed dried up on these ranges in the early part of the season; just what did you mean by that?

"A. I meant that the feed on the slopes, the south and west slopes of these ridges dried out early in the season.

“Q. Where is the best feed produced, as a rule, on a mountain range, is it on the south and west slopes?

“A. The south and west slopes during the time it is green produces the richest feed.

“Q. That is the richest feed? A. Yes, sir.

“Q. Where is there any range on which the feed does not dry up early on the southerly and westerly slopes?

“A. I don't know of any, they are all the same.

“Q. Why do you point that out as a defect in this range?

“A. I didn't point it out as a defect in this range more than as a defect in any other range. In grading the land and looking at it I estimated the area on the slope that might dry out early. That would be a disadvantage. I will say this, Mr. McCutchen, that there are considerable areas of very shallow soil, and where the bedrock is very close on those slopes, and that area will dry out a little earlier than areas where there is more depth of soil, where the grass gets a firmer root in the soil.

“Q. Is it or is it not characteristic of grazing lands in that easterly range of mountains that the rock does come quite close to the surface. A. In very many cases, it is.

“Q. Do you wish to be understood as saying that the land which slopes to the west and south in this group of land is any poorer than the land of a similar nature to be found all through those mountains—grazing land, I mean.

(1984) “A. I do not.

“Q. Is it not your opinion, as a practical stockman, that far and away the best lands in a range of that kind are the lands which face to the south and west?

“A. That statement is correct, so far as I understand it, but I want to add to it that the best lands in these ranges are the lands that face to the south and west provided there is depth enough of soil on those slopes to keep the grass green later in the season.

“Q. How do the lands facing to the south and west in this

range compare with the lands facing to the south and west in other cattle ranges in the easterly mountains?

“A. Will you allow me to come down Alameda Creek and compare it with Plot 6 of the Rancho El Valle de San Jose from Welsh Creek on?

“Q. I am asking you generally.

“A. There is some good depth of soil on that pasture down there; that does not dry out so early; you will find green grass on the westerly and southerly slopes there; you go up above the dam, and you will find the same slopes are pretty dry in the month of May, though.

“Q. Is it not a fact, dictated by your experience as a stockman, that cattle men set off large areas of a range of that kind where the feed is dry and graze it later in the season after it is thoroughly dry. A. It is.

“Q. And yet you rather intended to give the impression, didn't you, that that was a detriment to the land, the fact that the feed dried up?

“A. I tried to give the impression that the feed that dried up, the feed that got stunted and did not again revive and go to maturity, was not as good as the feed that did go to maturity and that dried up afterwards. It is a well-known fact among stockmen that the feed that grows on those slopes is not a mature feed in the months of April and May, it should get growing fully to the last (1985) of May to mature; then dry it out and it is the finest feed you could ever put before stock. But the sun will dry out this feed while it is in a soft state and not matured, and there is very little nutrition in that kind of feed after it is dried out. A good deal of that condition prevails along those slopes. I did not intend to knock those slopes, particularly, any more than call attention to the fact that the quality of grass will not be produced there that will be produced on a depth of soil sufficient to resist the heat of the sun that might come in the latter part of May.”

Now, do you recall that this witness stated that the last two years had been exceedingly good years there; while he was willing to say that beef could be put in prime condition he felt there ought to be a string to that condition and he said it was particularly during the last two years; and do you remember that it is only during the last two years that he has had sufficient familiarity with that range to tell you anything about it? Yet he goes on to tell you what will happen when the rainfall is light. He surely doesn't know anything about that. If he does he does not state it.

"Q. Where are the hills in that easterly range of mountains anywhere where the grass is green in the month of May? I am speaking now of the exposed portion of the country.

"A. In the month of May all that portion of the Mocho ridge traversed by the Mines road from Livermore going toward Mount Hamilton will, in an ordinary year, be green in the month of May from Wilson's place clear back to the upper end of the Taraville Creek.

"Q. On the ridges that face south and west.

"A. Yes, those ridges face south and west and they have the depth of soil; they stay green right along, right into the month of May.

"Q. When do you usually harvest in that section?

"A. Generally in the month of May.

"Q. In other words, in the same month that you say these grasses are green your cultivated vegetation has grown dry and has to be harvested?

"A. If you allow hay to get dry in that sense of the word, Mr. McCutchen, you will get a mighty poor quality of hay; you have to cut hay with the color in it, otherwise you won't get any price for it.

"Q. And you cut it about the first of May, don't you?

"A. Yes, in a very green state you cut it, from about the 10th to the 15th of May."

Our common sense and our common observation tell us that is not true; you don't cut hay in a very green state, you cut it just as it is commencing to turn. We know that from driving through an agricultural country and watching the farmers cut their hay.

(1986) "Q. And if you let it go longer it would get white and dry? A. Yes sir.

"Q. That is cultivated land, isn't it? A. Yes, sir.

"Q. And you say that these natural grasses that have had no cultivation and that are exposed to the heat of the sun from the south and west will remain green during the month of May, do you?

"A. I do. I still stick to my assertion that in an ordinary year the westerly and southerly slopes of that ridge, from the points I mention above to Taraville Creek will be in a very fair state of verdure in the month of May.

"Q. Do you know Marin County at all? A. No, I do not.

"Q. Do you know these hills along back of Berkeley.

"A. Not to any great extent.

"Q. Did you ever see them? A. Oh, yes, I have seen them.

"Q. Do you assume there is any fertile soil on them?

"A. Yes, I assume there is some fertile soil up there.

"Q. Are they irrigated or moistened to any extent by the fogs in this locality? A. They are.

"Q. Are they green at the end of May?

"A. That will all depend on the kind of a season there has been previous to the month of May you are referring to."

Now, I don't know whether the witness means by that that he is talking about a green condition in the Mocho prior to the month of May.

"Q. Did you ever know those hills to be green in the month of May unless there had been very, very late rains?

"A. They are beginning to turn at that time.

"Q. They don't begin to turn until the end of May?

"A. Yes, they are beginning to turn at the end of May.

“Q. And they are green until the end of May, are they?

“A. It would depend upon the season whether they were or not; they might be green at the end of May.

“Q. With reference to the season, is Calaveras quite favored, so far as rainfall is concerned? A. It is.

(1987) “Q. Much more than this Mocho country, you speak of, isn't it? A. Much more so, yes.

“Q. And yet, in the Mocho country, the grass remains green until the end of May, and it begins to dry up in Calaveras in April; is that a fact?

“A. With the hot weather striking you on those slopes in section 28, section 27 and section 20, on the tops of those ridges around the areas where the soil is shallow and you get a hot spell in the month of April, that feed will turn and get dry.

“Q. Do you recall that in giving your testimony and reading your notes you told us of any place on that range where the feed would be good late in the season, or even the first of June?

“A. I cannot remember any, Mr. McCutchen, except I go over them again, but I think I did mention that in places somewhere.

“Q. You really think you did mention one place where there was good feed on that 13,000 or 14,000 acres? A. I think I did.

“Q. Can you recall what that section was?

“A. 24, 19 and along that ridge, I consider that as a pretty good piece of feed. If I didn't say it before, I say it now.

“Q. Would that sort of feed put cattle in prime condition?

“A. If the entire Calaveras range was composed of that sort of feed, it would come pretty near doing it.

“Q. Then there is some feed on that range that is good enough to put cattle in prime condition? A. Yes, sir.”

Now, I ask you how that measures with his general statement made to Mr. Steinhart on direct examination that he had intended to give the impression that the feed on that range was not nutritious.

"Q. But you cannot name any section other than those to which you have referred where that is the case?

"A. That is the very best part of the Calaveras range, the point I have named."

* * * * *

(2346) "Q. for the purpose of advising yourself with reference to the grazing properties of the Spring Valley Company, you went as far (2347) afield as the Arroyo Mocho, didn't you?

"A. Yes, sir; I did.

"Q. And Corral Hollow?

"A. Yes, sir. The Corral Hollow and the Arroyo Mocho is strictly speaking a grazing proposition, and comparable with the lands in San Antonio and Arroyo Honda and Calaveras creeks.

"Q. That is to say, it is your opinion that the grazing lands on the Arroyo Mocho are as good on the average as the grazing lands around Calaveras and San Antonio and the Arroyo Valle?

"A. Yes, that is my opinion.

"MR. STEINHART: So that there may be no misunderstanding on that point, Mr. McCutchen, the witness' testimony heretofore in comparing those pieces was that he considered the Mocho better.

"MR. McCUTCHEN: Do you wish us to understand him in that way?

"MR. STEINHART: You can understand it as you wish; when you put it in the form you just did, that is to say, whether or not it is as good, that is capable of the interpretation that it might be better, or whether or not it might be better.

"MR. McCUTCHEN: Q. Do we understand that the grazing lands you have referred to on the Arroyo Mocho are better than the grazing lands around Calaveras, Arroyo Valle and San Antonio? A. Better than the average grazing lands.

"Q. Do you mean that the average of the grazing lands around the Arroyo Mocho are better than the average of the grazing lands around these other three localities?

"A. Owned by the Spring Valley Water Company, yes, I do consider them better than the average of those lands, better than the average of the grazing lands on the Arroyo Valle Creek owned by the Spring Valley Water Company, better (2348) than the lands in the upper Alameda Creek, better than the lands in the La Honda Creek, and better than the grazing lands in the Calaveras Creek, and equally as good as the grazing lands in and around the northerly end of Calaveras Valley and from there down to Sunol."

There cannot be any doubt about what the witness means.

* * * * *

"Q. Do you know the Arroyo Mocho country better than you know the Calaveras country?"

"A. I did know the Arroyo Mocho country better than the Calaveras country until 1914, but I consider now that I know the Calaveras country just as good as I know the Arroyo Mocho country.

"Q. What is the average rainfall at Arroyo Mocho and Corral Hollow? A. It is less.

"Q. What is it?"

"A. At Arroyo Mocho and Corral Hollow the rainfall is somewhat less; I do not know what the difference is between the rainfall in the two places.

"Q. Do you know whether it is very much less or only a little less? A. It is a little less."

I called your Honor's attention to an exhibit in this case which shows that the rainfall in Calaveras is 40% more.

"Q. Is that an important factor in determining the value of the grazing land?"

"A. To some extent it is, but in other respects it is not. The rainfall at Tracy is much less than it is at Livermore Valley, yet no man will say that land around Tracy will sell for as much as the land around Livermore Valley. The difference is so very little in the rainfall between those points that it don't make much

difference in the final results in an average of five or ten years.’’

Upon the subject of the relative merits of grazing lands in the Mocho and Calaveras—and it should be borne in mind that it is Callaghan’s claimed familiarity with the Mocho lands that enables him to value the Calaveras lands—I call attention to the testimony of Mr. Hayes, who is a real cattle man and not a make-believe cattle man; and furthermore, he is entirely disinterested. He testified to a very extensive experience in the cattle business. I quote from his testimony, beginning at page 3400:

“Q. When you were in the cattle business in Santa Clara and Alameda counties, were you in business on your own account or for someone else? A. My own.

“Q. Do you know the lands of the Spring Valley Water Company that lie to the east of Calaveras Valley? A. Yes, sir.

“Q. Have you been over them. A. Many times.

“Q. You know them quite well, do you? A. Very well.

“Q. Do you know the lands in the Arroyo Mocho district?

“A. Yes, sir.

“Q. Have you been over those?

(3401) “A. Yes, sir.

“Q. Had cattle on them? A. Yes, sir.

“Q. And you had cattle on the Calaveras lands that I have described to you? A. Yes, sir.

“Q. Will you state to the court which are the better lands for stock grazing, those in the Calaveras district, as I have described it to you, or the Arroyo Mocho lands?

“A. I consider the Calaveras lands very much superior.

“Q. Why?

“A. For the reason that they produce a greater quantity of feed and they are very much better watered.

“Q. Do the Arroyo Mocho lands produce a crop of grass every year?”

Now, see the difference between the tone of this witness and

the tone of Mr. Callaghan; he is not here endeavoring to depreciate the Arroyo Mocho lands.

"A. Yes.

"Q. A good crop of grass?

"A. Well, not every year; there are off seasons there when the grass is extremely short.

"Q. Due to the lack of rainfall?

"A. Due to the lack of rainfall.

"Q. Is there more rainfall or less rainfall in Calaveras than in the Arroyo Mocho country?

"A. Very much more, one year with the other; the average rainfall is very much more in the Calaveras district.

"Q. Do you regard that excess rainfall, that is to say, the excess of rainfall in Calaveras over Arroyo Mocho, as an advantage, from a grazing standpoint? A. Yes."

And, wasn't that the obvious answer?

Hadsell Tract.

I want now to call your Honor's attention to a few pages of testimony from Mr. Callaghan with reference to the Hadsell tract. I think that also presents a concrete example that will enable you to get some light upon the attitude of mind in which he approached this valuation. These are Callaghan's notes, that is to say, this was his description on direct examination: (1845)

"A. Plot 1 of the Rancho Valle de San Jose, 2,317.59 acres; this plot consists of the Charlie Hadsell place at Sunol, and on which is now located the water temple and filter galleries, also the intake of the Sunol dam. An area in the vicinity of the water temple consisting of 97 acres is planted to walnut trees, but the orchard is not in very good condition; about 40% of the trees are affected with dry rot, apparently caused either by frost or a lack of moisture. The soil in the areas of the plot which are level consist of a gravelly loam, with some streaks of gravel through it; is not generally adapted to other than hay and grain crops. Vegetables and alfalfa have been tried on this soil, but

seem to have proved a failure, as their cultivation has been abandoned. 1020 acres of the plot in this area consist of rolling hills, which can be cultivated to grain and hay, but will not produce a crop without summer fallowing. Soil is light red, gravelly, resting at a shallow depth on a red gravelly sub-soil; will yield from 1 to 1½ tons per acre.

"150 acres of the area of this tract consists of gravel creek bottom located in the Alameda and Laguna creeks. The rolling hills in the tract are very badly broken up with arroyos and creek beds, and about 500 acres of the tract in these places are fit only for pasturage. The segregation of the tract will figure in acres as follows:

"97 acres walnuts at \$350 per acre; (1846)

"550 acres gravelly loam at \$200 per acre;

"1020 acres rolling hills at \$40 per acre;

"500.59 acres pasture at \$30 per acre;

"150 acres creek gravel at \$50 per acre;

"Total value, \$207,267.70.

"Considering this tract as a whole, it has an average value of \$89.43."

* * * * *

(2240) "Q. We will take up the Hadsell tract first; I call your attention to the tongue of land that extends down to the Sunol dam, or nearly to the dam, and between Laguna and Alameda Creek, or Calaveras Creek. Have you that in mind?

"A. Yes.

"THE MASTER: That is not between those creeks, Mr. McCutchen, it is between the Alameda Creek and the Southern Pacific right of way.

"MR. McCUTCHEN: Very well, his Honor calls my attention to a mistake; I will say between the Alameda Creek and the Southern Pacific right of way.

"Q. What was your valuation of that portion of that tract?

(2240½) "A. The area of that tract which is gravel creek bottom, I put \$50 an acre on.

"Q. Is that gravel creek bottom?

"A. There are areas of that that are gravel creek bottom, yes, sir.

"Q. How much gravel creek bottom is there in that tract, that is to say, the portion of the Hadsell tract to which I have just called your attention?

"A. There is that area in the Alameda Creek from below the filter gallery down to the dam, and where the filter gallery is, there is gravel, and there is some further area in that portion up along Laguna Creek.

"Q. Are you including the land, now, where the filter gallery is?

"A. There is some gravel in there, yes, creek gravel along the filter gallery, west of the filter gallery and along the creek.

"THE MASTER: He does not refer to that. He means that big field there from Laguna Creek down to the dam, and from Alameda creek over to the Southern Pacific Railroad.

"A. In the entire tract, I have 150 acres of creek gravel.

(2241) "Q. What is your valuation, if you have any independent valuation of the parcel of the Hadsell tract to which I have called your attention?

"A. In the center, that would come in under my gravelly loam land, \$200 an acre.

"THE MASTER: I do not understand that. Do you mean that this tongue of land between Alameda Creek and the Southern Pacific right of way nearest to the Sunol dam is of the two hundred dollar class land?

"A. Yes, there is a field in there.

"Q. I thought that on your original examination you lumped that land there with the land along the Alameda Creek near the filter gallery as gravelly land?

"MR. McCUTCHEN: I am quite sure he did that, in answer to a question put by your Honor.

"A. That is not right, if that is so; there is an area in there where I have got some of this 550 acres of gravel loam; that 550 acres is composed of that field in which the filter gallery is south and west of Sunol and the area outside of the walnut orchard in the flat east of Laguna Creek and north of the Alameda Creek.

"MR. McCUTCHEN: Q. In order to arrive at that total of 550 acres, did you have a survey or examination made?

"A. No, I estimated all these myself.

"Q. Now then, won't you indicate in a general way on this map the outline of that 550 acre tract?

"A. There is an area north of County Road 1469 at the toe of the slope of that hill, commencing at the junction where the entrance to the water temple is, it extends around in this direction, towards Py's corner; it crosses the road, not quite so high as that, and takes in an area along here. These are the hills to the east. Approximately inside of these lines drawn with the pencil, on (2242) that tract would be the 550 acres of gravel loam, including also the 97 acres in walnut orchard; that 97 acres in the walnut orchard we got from Sidney Jones; Mr. Parsons and myself had him working in there for a week, and we asked him to give us the area, and my recollection is he also gave us the area of creek gravel in that tract and the area of the orchard.

"Q. Now, in a general way where is the creek gravel that you valued at \$50 an acre?

"A. In a general way it is in the bottom of these creeks from this point here on the southeast, and extending westerly to the easterly boundary line of 244 and along that easterly boundary line of 244 down towards the filter gallery.

"Q. Is the area between the creek and 244 all creek bottom, that is, between the present channel I mean?

"A. Yes, the present channel is all gravel.

"Q. Is the area between the present channel of the creek and 244 all creek bottom, included in your 150 acres of creek gravel?

"A. There may be a small portion of 244 that extends into the gravel in the creek, but it is a very limited area.

"Q. What is the width approximately of the creek which you include in the 150 acres of creek gravel?

"A. I could not estimate the width; where the water is diverted from the stream into the filter gallery it is pretty wide; it is wide enough to take care and divert the waters of the San Antonio Creek into the filter gallery and let the waters of the Alameda and Calaveras Creeks flow down through, on account of the Alameda and Calaveras Creeks being muddy owing to the hydraulicing out the dam— they have been during the spring of this year diverting the freshet waters of San Antonio into the filter gallery—

"Q. I asked you what was the width. Can you tell us approximately in feet?

(2243) "A. Approximately in feet I could not tell you. I did not measure it.

"Q. Did you include any land as gravel land except the land now occupied by the channel of the creek?

"A. No, I did not.

"Q. How long is the channel through that property, approximately?

"A. Well, I don't know how long it is, but that is a matter of scaling it on the map; there is a scale to the map.

"Q. Where is the rest of the 150 acres of gravel channel?

"A. Up through Laguna Creek.

"Q. How wide is that through that tract?

"A. It is fairly wide in places.

"Q. Approximately?

"A. There is considerable gravel up there but approximately

I could not say; I could not say the length of it.

“Q. Mr. Callaghan, you have said there are 150 acres. Now it is important to us and important to the Master that we should know where that 150 acre tract is, or be able to find out?

“A. It extends southeasterly to the boundary line of the tract where the line crosses the creek in a northerly and westerly direction to the Sunol dam; it extends from the junction of the Laguna Creek northerly and westerly again along Laguna Creek to the northerly boundary line of the tract, in different parcels all through that area.

“Q. Do we understand that in this tract of 150 acres of gravel land you have included or you have not included any tillable land?

“A. I do not think that I have included any tillable land except that there may be a small parcel of land that is gravel right east of the town of Sunol about the bridge there before you cross the bridge, going from (2244) Sunol eastward; that has been farmed, but it is a gravel and nothing but gravel, and it dries out in the spring.

“Q. It will not produce crops?

“A. It will not produce crops, no.

“Q. Then we understand, do we, that in that Hadsell tract are 150 acres that cannot be tilled, that is the portion which you have described, the flat portion of the tract.

“A. That is my best impression of the tract, that there was 150 acres of creek gravel that is not fit for cultivation, nor will not produce any crop.

“MR. STEINHART: May I ask one question?

“MR. McCUTCHEN: Yes.

“MR. STEINHART: Q. You spoke of Sidney Jones I think. Who was Sidney Jones— a surveyor?

“A. He was a surveyor, yes.

“MR. McCUTCHEN: Q. Have you his notes?

“A. No, I have not.

"Q. To what uses is the best of the Hadsell tract adapted?

"A. I think the best of the Hadsell tract is in the 97-acre walnut orchard.

"Q. Leaving the walnuts out of consideration, how much more is that part of the tract worth than the remainder of the flat portion of the tract?

"A. Well, I would consider the tract, leaving the walnuts out, as worth \$200 an acre, the whole entire level land of the tract.

"Q. You have said that the portion occupied by the walnut orchard is the best of the tract, haven't you?

"A. I think it is a little the best, yes.

"Q. How much better is it than the remainder of the flat land?

"A. Not very much better.

"Q. What are the uses to which the best of the Hadsell tract are adapted?"

This land that would not produce alfalfa and upon which the effort to grow alfalfa had proved unsuccessful!

"A. With irrigation it could raise alfalfa; there has been (2245) vegetables planted there, tomatoes have been planted there and other vegetables have been planted in the level land."

This same tract of land which would not produce vegetables!

"Q. Successfully? A. I think fairly successfully, yes.

"Q. You very often use the expression 'fairly successful'; what do you mean between 'fairly successful' and 'successful'?

"A. I mean one degree less than successful.

"Q. One degree less?

"A. Or two degrees less; maybe a little less; not quite successful.

"Q. Not quite successful? A. Yes.

"Q. Is or is not it vegetable land?

"A. I do not think it is good vegetable land.

"Q. Why not?

"A. There is a little too much gravel in it in places.

“Q. In places—in what places?

“A. Several places; principally towards the easterly portion of the tract.

“Q. Is there gravel in the portion of the tract planted to walnuts?

“A. There is evidence of some rock in the soil there; occasionally in plowing they turn over some rock.

“Q. Turn over some small boulders, you mean?

“A. Not small boulders; I mean small rocks in the soil there. I do not mean the soil is gravelly at all, but I mean there is some gravel in the soil as evidenced by the rocks.

“Q. Do you mean to say that the presence of those rocks is an objection to the soil?

“A. I do not consider them a benefit to it—yes, I consider them an objection.

“Q. You consider them an objection? A. Yes.

“Q. You consider that because of their presence the productivity of the soil is decreased, do you?

“A. I would not say it is decreased, but it is not improved by the presence of those rocks in it.

(2246) “Q. Now, coming back again, is it your opinion that vegetables cannot be produced in that locality on that soil?

“A. It is not my opinion that vegetables cannot be produced successfully on that soil; I think they can on some portions of that soil be produced successfully, but not over the entire area.

“Q. On what portions of the soil can vegetables be successfully produced?

“A. Principally the portions where the walnut orchard is, and the portion west of there towards Laguna Creek where the nursery is.

“Q. Can they be produced as successfully on that portion of the Hadsell tract as on the Pleasanton lands? A. No.

“Q. Why not? A. Entirely different soil.

“Q. How would you describe that soil on the Hadsell tract?

“A. It is a dark loam, with very little sand in it.

“Q. A dark loam with little sand? A. Yes.

“Q. Ordinarily that would describe an exceedingly rich soil, would it not?

“A. Well, ordinarily it would, but I am at a loss to describe that soil, to find the proper expression to describe the soil; it is not as rich soil as the Pleasanton soils.

“Q. How do you know?

“A. I have seen the crops produced on both soils, and I know that the crops produced on the Pleasanton soils are superior to the crops produced on that soil.

“Q. What particular crops have you in mind now that you are comparing?

“A. I am comparing barley and wheat and vegetables of all kinds, carrots, beets, tomatoes.

“Q. When have you seen vegetables of all kinds produced on this Sunol land?

“A. I think that in my 20 years that I have known that land that I have seen in some part of it nearly all kinds of vegetables planted.

(2247) “Q. Were they produced successfully?

“A. There were some Italians that had a garden right close to where the entrance to the water temple is on both sides of that road 25 years ago, that had a good vegetable garden there; they had plenty of water, they hauled manure and raised good vegetables.

“Q. Exceedingly good vegetables?

“A. I should say they raised very good vegetables; that is my impression.”

Now, if your Honor please, this is the land the use of which for vegetable culture was abandoned because vegetables did not prove a success; that was his characterization of it when he valued it.

“Q. Well, now, you have said, haven't you, that all of that

550 acres, indeed all of the 550 acres plus 97 is all about the same character, have you not?

"A. I think I have said that the best land in it was in the walnut orchard and to the west of the walnut orchard, and that the poorest land was to the easterly portion of it, and that portion of the land running to the Mission Pass road.

"Q. Do I remember correctly when I say that you said that there was really very little difference between the walnut orchard if the trees were removed and the rest of the 550 acres?

"A. No, I did not mean to say that; if I said that I did not mean that at all; I mean that the walnut orchard is the best land, and the land west of the walnut orchard, where the nursery is, is the best, and it tapers off and gets poorer as it extends easterly to the Mission Pass road, and that area of the flat land south of the Mission Pass road or east of the Mission Pass road is poorer than the land in the big field where the water temple is.

"Q. Why did you put it all in the two hundred dollar category?

"A. Because I looked at the tract and I considered what it was worth, what it would sell for, what the entire whole area was worth.

"Q. What was the best of the land worth then? That is what I (2248) asked you awhile ago?

"A. There might be 100 acres of that land surrounding the walnut orchard and in the nursery that would be worth probably \$250 an acre.

"Q. And that is land that has a black loam without much sand in it?

"A. A dark loam soil without much sand in it, with some rocks through it.

"Q. With some rocks through it? A. Yes.

"Q. That is, you do not mean there is any rock in place, do you; you mean the rocks are loose? A. Loose rocks.

"Q. So far as texture of soil is concerned, what advantage

has the Pleasanton land over that black loam or dark loam that you have described in the Hadsell tract?

"A. The Pleasanton loam is a sediment loam, a rich sediment loam.

"Q. What do you mean by a sediment loam?

"A. It is a loam that has been deposited there or a sediment that has been deposited by the creek.

"Q. This land is between two creeks, is it not?

"A. Yes, but this land has not received any benefit from the overflow of either creek. This land is land that was made from the soils that came off the surrounding hills, and possibly some of the underlying soil of that tract has come down San Antonio Creek and the Alameda Creek and made the bottom soil where the gravel is in the bottom; and the surface soil has come off the surrounding hills and it is a darker soil in texture than the Pleasanton soils, a different type of soil altogether; you do not find these rocks that I have mentioned in the Pleasanton soils at all.

"Q. What is the depth of this dark loam?

"A. I could not say definitely what the depth is, but I would consider it would be a fairly good depth of soil over that entire flat area.

(2249) "Q. What do you mean by fairly good depth?

"A. 4 to 5 feet.

"Q. Did you find any alkali there? A. I did not."

* * * * *

(2250) "Q. What sort of soil is found on the hill lands in the Hadsell tract?"

This answer is interesting in view of what he has said in reference to the soil in the flat which he has described as a dark loam with sand in it; and he has also said that that type of soil came from the Hadsell hills.

"A. Very light soil, red in color, shallow to subsoil, and some rocks mixed with it.

"Q. What do you mean by 'shallow'?"

"A. I mean a shallow depth to subsoil.

"Q. How many feet, how many inches?"

"A. Well, 8 to 10 inches, 12 inches.

"Q. Where is the place on the Hadsell tract where the soil is only 8 to 12 inches deep; that is to say, what portion of the tract which you have described as farming lands?"

"A. All of that area lying north of the road going from the Pleasanton-Sunol road to the Villacita's school house can be classed as light red gravel soil resting at a shallow depth upon a red gravel subsoil, that is the area in which it can be found.

"Q. And all of that area has a depth of from 8 to 12 inches?"

"A. All except a small portion that might be along the creek channels, all the slopes of the hills except that portion that may be along the base of the slope of the hills, along the creek channels, has light soil 8 to 10 inches deep resting on a red gravel subsoil."

* * * * *

(2254) "Q. What was your criticism of the walnut trees that you found on the Hadsell property?"

"A. My criticism of the trees on the Hadsell property was that in 1914 they didn't look very good.

"Q. Have you seen them since then?"

"A. Yes, sir. They have improved considerably since then.

"Q. How do they look now? A. Fairly good.

"Q. Would you call that walnut orchard a thrifty looking orchard now?"

"A. Yes, I would say that the walnut orchard is looking thrifty at the present time.

"Q. Do you assume that that land is suitable for walnut culture?"

"A. I don't know anything about it.

"Q. How old are those trees?"

"A. They must be—it must be 3 or 4 years since they were planted.

"Q. When will they come into bearing? A. I don't know."

This is the same witness who told us when examined with reference to another subject matter that he did know about walnuts.

"Q. When do you assume they will come into bearing?

"A. I should think, making a guess at it, that a walnut tree ought to come into bearing in 5 or 6 years; probably you will get a fair crop off of them in seven years.

"Q. Do you know that? A. Not definitely, no.

"Q. What do walnut orchards in full bearing sell for per acre?

"A. I don't know.

"Q. Have you ever heard of the sale of one?

"A. No, I have not.

"Q. What then enabled you to place a valuation of \$350 an acre on this land planted to walnuts?

"A. I placed that valuation of \$350 on that land without considering the orchard any farther than the cost of the work that was put in on the orchard; that any increased (2255) value that land might have from the fact that an orchard was on it would have to come later on than in 1913; it would come later on if the value was increased there. I added the cost of labor that was used in putting in that orchard. I estimated about what it would cost and added that to the price of the land. I thought the land was entitled to that addition."

Now, that ends my quotations from Callaghan's testimony, and I shall take up now the testimony of Mr. Parsons.

MR. SEARLS: In connection with that walnut orchard, Mr. McCutchen, you called attention to the fact that on direct examination he said that the vegetables growing there had not proven a success. If I can call your attention to his exact language, it was that vegetables and alfalfa have been tried on

that soil and seem to have proved a failure as their cultivation has been abandoned.

MR. McCUTCHEN: And the same witness says he remembers having seen vegetables grown on that land by Italians successfully. Doesn't he say that?

MR. SEARLS: Perhaps he does, Mr. McCutchen, but is there anything inconsistent in those statements? It might have proved a failure later.

MR. McCUTCHEN: Does he say so? Does he suggest they proved a failure?

MR. SEARLS: He suggests that the only reason for the statement is that they have been abandoned.

MR. McCUTCHEN: Well, Mr. Searls, if that is a fair attitude of mind in which to approach the valuation of property of this kind, why, then, I suppose the explanation will meet what I have had to say. What I have been endeavoring to make clear is that Mr. Callaghan approached this subject in a prejudiced and an unfriendly attitude, and I think that is a concrete example of it. As Mr. Greene suggests, it is quite apparent that the abandonment of it for vegetable culture was probably because the company bought the land and used it for other purposes. Upon that land is what this witness describes as a thrifty walnut orchard. The reason for the difference between his description when he was on direct examination and his description later on, he having said on direct examination that 40% of those trees were suffering from dry rot, was that on the inspection trip his Honor had seen those trees and was in a position to form his own opinion. Of course, if those trees had been suffering from dry rot in the Spring of 1914, they would not have been thrifty in the Spring of 1915.

Callaghan's Unfriendly Attitude.

There is one further reference to the testimony of Callaghan that I want to make: At page 1948, referring to the Calaveras lands, he was asked:

“Going up and down that valley—that is to say now from your notes—is there a single piece of property for which you have any commendation outside of the floor of the valley?”

“A. There is not many of them that merit much commendation.”

* * * * *

(1949) “Q. Take the map and see if you can point to any piece of property in that part of the floor of the valley which you think would be desirable for a farmer to acquire?”

“A. The Brandt-Hansen place is the very best piece there and you have harped on that since yesterday morning.”

* * * * *

(1950) “Q. It does not occur to you, Mr. Callaghan, that in the notes which you made with reference to these various properties you approached the property in a spirit of unfriendliness?”

“A. The wording of my notes in regard to those properties is such as if possible to bring to me a mental picture of the piece I am describing. I worded them so, so that all this will appear to me, what I noted here on the property, that it will be prominent in the wording.”

Alongside of that, consider what he has to say of the piece of land that was sold by Silva to Thomas, near T-239. The question was put to him, “What character of property is it?” and his answer was, “That is a rich, deep, clay adobe soil.” He was then describing a piece of land which he was using for the purpose of sustaining a low valuation of Spring Valley lands, and his characterization of it was that “it is a rich, deep, clay adobe soil.” His records will be searched in vain for any commendation of the Spring Valley lands except those about Pleasanton.

There are several noteworthy examples of this in the record. A very good one is to be found at page 1991. He was discussing 200 acres in Parcel 225, valued at \$10 per acre and said: (Ab. 551)

“There are 80 acres there of good pasture, and about 80 acres

of fair pasture. [This may also throw some light on what the witness means by "fair."] It is going to be hard to make 80 acres of good pasture in that piece. The 80 acres of good pasture is worth about \$15. It might be worth \$20. That was pretty good pasture in there. The 80 acres of poor pasture is worth about \$7.50. The remainder of the 200 acres is worth just enough to make \$2000 if you add them all together. That would be minus. It figures up that way, but if I had you on the ground, I could explain to you the difference between the good and the bad, better than I can sitting here."

Another example of it is to be found on pages 2127-8, where he says that fruit trees had been planted and brought into bearing, but had not produced good results, although he had no knowledge on the subject.

A striking example is his description of the flat land of the Hadsell tract, of which he says, "It is not generally adapted to other than hay and grain crops; vegetables and alfalfa have been tried on that soil, but seem to have proved a failure as their cultivation has been abandoned," for which statement there is not a semblance of foundation.

Another example of it is found in his description of O-268 with reference to which he says "hops were planted, with indifferent success."

And, lastly, and probably more striking than all the others, is his comparison of lands in the Mocho with lands around Calaveras, to the very great detriment of the latter; and upon this, and as a complete refutation of what he says, we have the testimony of Mr. Hayes, who is entirely disinterested and who has been engaged in the cattle business all his life.

These are a few concrete examples.

Another, however, occurs to me, while I am on this subject. When he was endeavoring to show that the Schween land which yielded 35 sacks of barley to the acre was not worth more than \$290 per acre, he proceeded to state in detail the cost of a barley

crop, including the harvesting and marketing of it. He was then bent on getting the cost as high as possible so as to sustain his claim that the land was only worth \$290. When he got over to Calaveras Valley, however, and was asked to tell how he knew that the Calaveras lands were worth \$125 an acre, he said because he knew what they would produce. He had only seen them cropped to barley once—indeed he seems to be uncertain whether it was barley or wheat—and, according to him, the yield was 10 sacks per acre. If we take the costs which he used in the Schween case and apply them to the Calaveras lands, not only could a farmer not afford to pay \$125 per acre for those lands, but he could not afford to accept them as a gift and obligate himself to grow barley upon them.

Parsons' Method of Making Valuations.

I now come to Mr. Parsons, and I propose to take up first Mr. Parsons' method of making valuations. As I have said, Parsons and Callaghan valued about 49,000 acres of land ranging in value from \$4.50 to \$500 an acre, and the difference between them is less than 1%. Referring, at page 2580, to narrow strips along Niles Canyon, he says: (Ab. 696-7)

“We really fixed a value after discussing the thing, which was more of an arbitrary value of \$100 an acre. * * * * Mr. Callaghan and I reached that conclusion separately, but we discussed the matter quite a good deal before fixing our value.”

Callaghan said he had no yard-stick whatever for the fixing of that value; it is quite remarkable that two men with no yard-stick would each have found that value to be \$100 an acre.

At page 2641, referring to his valuations, he was asked—and this was on direct examination—

“Q. Did you make your preliminary appraisal of the value of these parcels before or after discussion with Mr. Callaghan and Mr. McDonald, or either of them?” * * * * *

“A. As far as any figures were concerned,—as far as any prices were concerned, the prices were put on after discussion as

to lines and physical conditions, but not after any discussion of prices. Our prices we kept to ourselves.

“Q. After you had made your preliminary appraisal (2642) did you then discuss values with one another?

“A. We did in some cases.

“Q. Did you ever make any changes in the preliminary estimates you placed upon the property?

“A. Perhaps in a few cases, but very seldom.

“Q. Under what circumstances, if any, did you make changes?

“A. After I had investigated other lands and gotten further data on the subject and concluded that perhaps my prices were too low or perhaps too high; I think as a rule the changes were made more to raise the prices than to lower the prices. Those were not a great many cases.

“THE MASTER: Q. Did you have any preliminary discussion before you made your figures as to any general range of prices of particular lands?

“A. I had in view certain lands in my mind, compared lands as to what other lands sold for.

“Q. That is not what I mean. You have said that you reached your figures independently in the first place and then compared with Mr. Callaghan and Mr. McDonald the figures thus reached and made changes; what I want to know now is, before you fixed your first figures yourself, did you and Mr. Callaghan or did you and Mr. McDonald, or did all three of you have a discussion among yourselves as to the range of prices you would allow for grazing lands, for example? A. No, sir, not at all.

“MR. McCUTCHEN: I don't think that is an answer to your Honor's first question.

“THE MASTER: I think it is; that is what I wanted.

“MR. McCUTCHEN: But I think that question modifies the first question and limits it to grazing land.

“THE WITNESS: I did not mean it that way in my answer;

I meant covering the whole thing. I meant my knowledge of that land and my knowledge of other land.

(2643) "THE MASTER: Q. I will ask you the same question as to the farming lands and the hill farming lands.

"A. The same answer would apply.

"Q. You did not discuss prices at all?

"A. No, sir, we were not discussing prices. We tried to arrive at an independent valuation of the land as far as the prices were concerned. As far as physical conditions were concerned it was almost necessary the way we worked to hunt out the lines and get the location of the corners the best we could and we worked together and discussed those things.

"Q. Have you preserved your first preliminary appraisal?

"A. I have not, no, sir.

(2643) "MR. SEARLS: Q. After you had made your first figures and after your subsequent discussions as to values with Mr. Callaghan and Mr. McDonald, did you ever reach any compromise figures as to any of these lands? A. I did not.

"THE MASTER: What do you mean by that?

"MR. SEARLS: For instance, whether they ever split the difference between their values, or anything of that sort.

"A. No, sir, we did not; we did not split any values.

"Q. In other words, if Mr. Callaghan convinced you that he was right and you were wrong, or if after considering the points that he advanced you believed that he was right and you were wrong, you adopted his figure as an entirety and made it your own; is that the idea?"

* * * * *

(2644) "A. There were some cases—we didn't make these appraisals—I didn't make these appraisals the first time I went out, or the second time or the third time; sometimes you would get on to a piece of land and you would find conditions that would make you think that that was an awful bad piece of land; you would get on to it from around the other way and you would

see certain advantages in that land that you didn't see before; then I was perfectly willing to change my figures on that.

"THE MASTER: Q. To sum the matter up then, if I understand your point of view, there may have been cases where you took Mr. Callaghan's figure after discussion; I assume it is quite possible that there might be a case where each of you abandoned his first figure and reached a different figure. A. Yes, sir.

"Q. But you did not split the difference by any process of drawing lot or computations in the way of finding an average?

"A. No, sir, and I never argued to convince Mr. Callaghan that I was right or argued to convince Mr. McDonald that I was right. After discussing the physical conditions of the thing and where we came at it from different ways I put my figure on and they might have conceded that I was right; in other cases I could see that perhaps I was wrong in my first ideas. I think that a man's afterthought is better than his forethought on a matter of that kind as a rule.

"MR. SEARLS: Q. When you made changes of that sort, did you do it merely upon their statement as to the different physical conditions, or did you make an investigation yourself?

"A. Those changes I think I can safely say came about after I had looked the land over another time, after I would go out and take another look at it or approach it from a different way.

(2645) "Q. What was the first report or memorandum which you gave the City Attorney's office showing your valuations upon these properties? When was that report or memorandum given to the office?

"A. It was not a report exactly, but in connection with one of the engineers I think connected with the City Department I gave him my valuations on the different pieces of land. We went through the maps and through the pieces and I put my valuations on from the notes that I had."

* * * * *

(2714) Referring to O-268:

“Q. Now, Mr. Parsons, will you tell us the guides that you used in valuing that tract, that is to say, how you arrived at \$200 for part of the land, and \$400 for the remainder?”

Your Honor will remember that he subdivided that tract just as Callaghan did, and he put the same amount per acre on each piece that Callaghan did.

“A. Well, that was my judgment as to what that land would be worth.

“Q. I know, but can't you tell us any more than that?

“A. I think the land along the creek is pretty good land.

“Q. We think the other land is pretty good land, but that does not get us anything.

“A. I think the land along the creek is worth, one acre is worth two of the other, for farming purposes.

“Q. When you made this subdivision of 200 acres in the one tract and 99 acres in the other, did you know how Mr. Callaghan was going to divide the tract? A. I think I did, yes.

“Q. But when you placed a valuation of \$200 an acre on the one piece and \$400 on the other, you did not know what his valuation was going to be? A. I don't think I did.

(2715) “Q. In how many cases have your valuations and Mr. Callaghan's coincided to a nicety? A. Quite a good many.

“Q. There are very few cases in which they have not, aren't there?

“A. There are some, yes.

“Q. Very few though, aren't they?

“A. I don't know that. I have not followed Mr. Callaghan's particularly.

“Q. And in all these cases, you made your valuations without knowing what Mr. Callaghan's were going to be, and he made his without knowing what yours were to be? A. No.

“MR. SEARLS: That was not his testimony.

“A. I did not say anything of that kind, Mr. McCutchen, because I did know; but what Mr. Callaghan's valuation on a

piece of land was would not have the slightest effect on me, so far as my valuation was concerned.

"MR. McCUTCHEN: I do not want to misquote you, Mr. Parsons, but that was my understanding of your testimony.

"A. No.

"Q. You did know, then, when you fixed your valuation, what Mr. Callaghan's valuations on the same pieces were?

"A. No; I don't say that altogether; in some cases I changed my valuations; in some cases.

"Q. Can you tell us the cases in which you changed your valuations?

"A. No, I could not.

"Q. You have not any note or memorandum that would enable you to throw any light on that? A. No.

"Q. Did Mr. Callaghan change his valuation in places and agree with yours? A. I don't know that.

"Q. You don't know anything about that? A. No.

"Q. You did not make any efforts to ascertain whether his valuations coincided with yours? A. Perhaps at times we did.

"Q. Doesn't it strike you as quite remarkable, Mr. Parsons, that two men proceeding along independent lines would (2716) arrive at valuations as identical as those that you and Mr. Callaghan reached in this case? A. I don't think so.

"Q. You don't think so? A. No.

"MR. SEARLS: Mr. McCutchen, I think you ought to bear in mind the testimony that he did give, which was to the effect that they did not act entirely independent in the valuations, but merely their first valuations were made independently; that was his testimony; he has said right here that he changed them time and again.

"MR. McCUTCHEN: Do we understand, then, that before arriving at your values you discussed with Mr. Callaghan what his were to be? A. No.

"Q. He did not discuss with you what his were to be?

"A. No. I don't think so.

"MR. SEARLS: Which valuations are you referring to, his final ones, or the first ones?

"MR. McCUTCHEN: I am referring to his final ones.

"A. The final ones.

"Q. The valuations to which you have testified here.

"A. Why, some of my final valuations have been changed since I put the first valuation on, yes.

"Q. Were they changed to correspond with Mr. Callaghan's valuations?

"A. No; I didn't care what Mr. Callaghan's valuations were, particularly.

"Q. Did you change yours after knowing what Mr. Callaghan's valuations were?

"A. Yes, I knew what his valuations were; I have known for quite a while what his valuations were.

"Q. When you made any changes you made them after you had been informed of the figures that Mr. Callaghan put upon the same piece of land?

"A. No. After I had been informed, I had it right before me; I had Mr. Callaghan's valuations on the land, and Mr. McDonald's valuation on the land, as far as that is concerned, and he had mine; but whether he put his valuations on first or I put mine on first, that is a question."

Now, going to page 2755 and referring to parcels 272, 273 and 277, he says (Ab. 741-2):

"If the three holdings, 272, 273 and 277 were thrown into one field—the fences being removed—they would be less valuable per acre as far as the market value goes, and if I had found those pieces in one field, I would have put a lower price per acre upon them than I actually placed upon them."

* * * * *

(2756) "Q. How much less would they be worth if they were in one ownership and under one fence than if in two ownerships

and under two fences?

“A. They would be worth about two-thirds.”

Now, I only cite that as showing that this witness has not a very accurate notion of the method to be pursued in valuing real estate.

At page 2772 he says:

“Q. Look at these three pieces in 282: They are pretty well surrounded by roads, aren't they? A. Yes, sir.

“Q. And yet you place a valuation of only about 75% on those that you put on Q-268, do you not? A. 75%, I guess that is right.

“Q. So the fact that they were surrounded by roads and the fact that Q-268 was a large piece did not induce you to put a higher valuation on the small pieces in that case, did it?

“A. Q-268 has some advantages that the others have not.

“Q. What is it?

“A. It is close to town; it has two lines of railroad, one on one side and one on the other; it is a competitive point.”

You remember that the Southern Pacific and the Western Pacific extend through Q-268; they were both within a very short distance of Pleasanton, and there was no station for either road on the land.

“Q. From the farmer's standpoint, do you look upon that as an advantage to Q-268? A. Yes, sir.

“Q. If you were carrying on farming operations would you like to have your land cut by two railroads, with no station on the land? (2773) A. Yes, I would be tickled to death.

“Q. You would? A. Yes, sir.

“Q. You think that would be an advantage? A. Yes, sir.

“Q. You are serious in that, are you, Mr. Parsons?

“A. Yes, sir.

“Q. You mean that, do you? A. Yes, sir.

“Q. You think that the fact that those two railroads extend through Q-268 is an advantage to Q-268, from a farming standpoint? A. Yes, sir.”

O-268, Hop Yard Tract—Character of Soil.

Taking up now his discussion of some of the Pleasanton properties, and particularly the soils found there, he says, at page 2708 (Ab. 731):

"I am in doubt whether or not there is enough alkali in it to interfere with the successful production of alfalfa, but I should say in the 200 acres there is possibly more than 50 acres. I mean to say that if you keep up irrigation and leaching, and putting manure on that 200 acres, which I have valued at \$200 an acre, that you are going to make some pretty good land there, notwithstanding the alkali, and I therefore do not say that on 50 acres of the 200 it is not possible to grow alfalfa now, successfully, on account of the presence of alkali. Putting manure on it overcomes the alkali very much. I have never cultivated alkali land."

* * * *

(Ab. 731; Tr. 2710) "This hop yard property is pretty fairly well drained, and the drainage is and was all right."

* * * *

(2711) "Q. Do you think, then, it is fair to condemn a piece of land upon the alleged presence of alkali, unless you know that it contains alkali to such an extent as to interfere with the production of plant life? A. Yes.

"Q. You do consider that fair? A. Yes, I do."

* * * * *

(Ab. 732; Tr. 2712) "I value the land to the north and west of Black Avenue at \$200 an acre, and on the portion of O-268 lying south and east of Black Avenue I have given a value of \$400 an acre. * * * The alkali does not show in the piece south and east of Black Avenue as it does in the other. The piece lying south of Black Avenue is nearer the creek and covered up with more alluvial soil, which accounts for the absence of alkali in it."

In other words, in that case the alkali is negative.

(2714-5) "A. I think the land along the creek is worth, one acre is worth two of the other, for farming purposes.

“Q. When you made this subdivision of 200 acres in the one tract and 99 acres in the other, did you know how Mr. Callaghan was going to divide the tract? A. I think I did, yes.

“Q. But when you placed a valuation of \$200 an acre on the one piece and \$400 on the other, you did not know what his valuation was going to be? A. I don't think I did.”

* * * *

(2717) “Q. When you say that the triangular part of O-268 is worth twice as much as the square portion, do you mean that it will produce crops twice as great as the square portion?

“A. I think with all the risks, yes; I think so. I think a man would be better off paying \$400 an acre for that land along the creek than he would paying \$200 an acre for the land just beyond.

“Q. The whole tract is in alfalfa, isn't it? A. Pretty much.

“Q. According to your doctrine then, Mr. Parsons, the portion of the tract that is south of Black Avenue should produce twice as much as the crops now growing on the land on the portion north of Black Avenue?”

Now, there was an opportunity to make a demonstration, because the crops were growing there.

“A. Not in alfalfa. Alfalfa is not a criterion altogether. Lots of land will produce alfalfa that will not produce anything else, so far as that is concerned.”

Now, isn't that statement ridiculous, and don't we know it to be ridiculous? Where is the land anywhere that will produce good alfalfa that won't grow anything else? Now, it may seem strange to you, but later on you will find that this man admits he has never had any experience whatever in the growing of alfalfa.

“Q. Then your rule that the triangular piece will produce twice as much as the square piece does not apply to an alfalfa crop. A. Not altogether.

“Q. Does it apply at all?

“A. Yes, I think the land south along the creek there, if

handled right, will produce more alfalfa than the land in the rectangular piece.

“Q. What experience have you had in growing alfalfa, Mr. Parsons? A. Very little personal experience.

“Q. Have you had any experience at all?

“A. Yes, I have attempted it.

“Q. Have you any reason to believe that the men who are growing alfalfa on this land now are not experts in the growing of that crop?

“A. I don't know. They are expert milkmen, but whether they are expert alfalfa raisers I don't know.

“Q. But, at any rate, you are not; is not that true?

(2718) “A. No, I would not consider myself an expert on alfalfa. I am pretty good on raising milk though.

“Q. Well, you sometimes raise milk on other feeds than alfalfa, don't you? A. Yes, but it is a mistake.

“Q. What is a mistake?

“A. Trying to raise milk on anything else except alfalfa in California.

“Q. Yet, you are trying that very thing, aren't you?

“A. I did try it; I got out in time, though.

“Q. What I am trying to get at, Mr. Parsons, is whether you had any experience which enables you to determine whether the method of growing alfalfa on that land is not the proper method?

“A. No. I say they are using the very best method. I think that outfit there with a dairy and with the manure and with the water, are going to make lots of alfalfa grow on that land.

“Q. They are going to make a fine crop of alfalfa grow on the whole tract, aren't they? A. Yes, I think they will.

“Q. And yet, at the end of the life of this plant, which you say will be 4 or 5 years, what sort of land will that be?

“A. It will be better land than it was before, I think.

“Q. Will it be good land then?

"A. Yes, it will be pretty good land.

"Q. Will it produce any sort of crop then?

"A. Not every kind of crop.

"Q. What crop will it not produce? A. I think the grain crops would run out after a few years on that land."

Now, I ask that you bear that answer in mind because I think it is a very unfair answer.

"Q. Well is not that so all over the state? Don't grain crops run out after a few years? Has not that been the experience in San Joaquin Valley and in Santa Clara Valley and in your own country over there, Livermore Valley? Has not that been the experience of all those lands, that the grain crops run out after a few years?

(2719) "A. Oh, in a way, yes.

"Q. Is it not recognized as poor farming to put in the same crop year after year?

"A. I think that is the general impression.

"Q. Well, when you say that that ground would run out in a few years, don't you think that as good farming no effort should be made to grow grain on the same land continuously season after season? A. Yes.

"Q. Do you mean anything more as to that than this: that in order to grow crops successfully on that land the crops should be rotated?

"A. I mean to say that on this particular piece of ground I don't believe you could rotate with certain kinds of crops.

"Q. What is the crop you would not grow there?

"A. I doubt if you could raise good beets on it, tomatoes or good cucumbers.

"Q. What experience have you had in beet growing?

"A. Very little.

"Q. Have you had any?

"A. No, not raising beets myself—yes, I have raised beets too a little; but I am not an expert.

“Q. In your own kitchen garden, do you mean?

“A. Oh no; I raised beets for one or two years, but that is all the experience I have had.

“Q. What is there about this land that will prevent the successful production of beets on it?

“A. I think the land will dry out and——

“Q. ——I am assuming now that it will be irrigated.

“A. Oh, well, then, I have nothing more to say.

“Q. Let us agree so far: Assuming now that the land is irrigated, Mr. Parsons, what is your criticism of the land?

(2720) “A. Well, of course, you could not raise tomatoes or cucumbers; you could not raise those things there.

“Q. Why not?

“A. I don't know that your irrigation would do you any good on grain.

“Q. Why couldn't you raise tomatoes and cucumbers?

“A. Because they burn up over there in that district; the sun is too hot.

“Q. That is not on account of a soil condition, is it? That is on account of a climatic condition?

“A. Yes, that is more climatic.

“Q. So that that criticism would apply to the whole of the Pleasanton Valley? A. Yes, I think it would—not altogether.

“Q. I don't want you to go as far as Livermore, Mr. Parsons, you can stop short of Livermore?

“A. Well, I don't believe it would, quite; I think on the lands south of del Valle there you could come pretty close to raising tomatoes.

“Q. What crops could not be grown upon O-268 if you had water to irrigate it? A. That could not be grown successfully?

“Q. Yes.

“A. Well, I don't take into consideration the factor of the irrigation; when you put irrigating water on the land you have brought in a factor there that changes conditions altogether. If

the irrigation goes with the land that is a different proposition.

“Q. Mr. Parsons, for the purpose of placing your valuations on this entire Pleasanton tract, have you assumed that it could not be irrigated?

“A. I have assumed the conditions just as I found them. In some places it was irrigated and in some places not.

(2721) “Q. Have you assumed that it could not be irrigated, in placing your valuation upon this tract? A. No.

“THE MASTER: Q. You mean by that, that irrigation was not we will say legally possible?

“MR. McCUTCHEN: Yes.

“THE MASTER: Q. Did you assume that the water was available for irrigation? A. Yes, sir.

“MR. McCUTCHEN: Q. I don't think I understand you then, Mr. Parsons, with reference to O-268; you stated a few moments ago, as I recall it, that if you could get water for irrigation it would change the situation entirely?

“A. Well, I don't know how much water you can get there for irrigation.

“Q. Do you assume that you could not get enough water for the irrigation of O-268? That is to say, to use the land to its best advantage. A. I don't know.

“Q. Well, let us assume that you could; let us assume that you could get water for its irrigation; then do I understand that, in your opinion, the alkali that is in the land would soon be leached out and the land would be left without any alkali?

“A. In time you would get the alkali out of there, I think.

“Q. You would get it out of there very quickly, wouldn't you? A. No, I don't think you would very quickly.

“Q. How long would it take?

“A. It would take a number of years.”

This is the same witness who came back within a day or two and told us that the land had increased in value \$40,000 in one short year:

“Q. Would it take any longer than the life of this present plant of alfalfa that is on the land now? A. I think it would.

“Q. What guide have you for determining it, Mr. Parsons?

“A. Well, that is my opinion.

“Q. Nothing except your opinion. I also understood you to say (2722) a while ago—and if I did not understand you correctly you can correct me—that if you had water upon that land it would make a difference in your view with reference to the present ability to produce other crops; what crops had you in mind?

“A. Well, I was thinking of beets at the time. Sometimes if you have a little water to put on beets at just the right time of the year it helps things along quite a good deal.

“Q. Then, in your opinion, if there was water available for the irrigation of beets, the square portion of O-268 would produce a good crop, would it?

“A. Not particularly; I don't think so; not as good as the triangular piece.

“Q. Why not?

“A. Because of the soil, the nature of the soil and the alkali that is in the land.

“Q. Is there so much alkali in the square portion of O-268 as to interfere with the production of beets? A. I think so.

“Q. Do you know from your experience or from your reading on the subject that beets is a crop that is planted in alkali land?

“A. I understand so.

“Q. You do know that? A. Yes, sir.

“Q. You have never seen beets tried on this land, this O-268?

“A. I think I have, but I don't quite recollect it though.

“Q. When? A. I can't tell you that.

“Q. Do you know whether it was a successful crop or not?

“A. Not particularly successful.

“Q. What portion of O-268 did you see those beets on?

“A. I can't tell you that; I can't tell you that now.

“Q. You are in doubt whether they were on O-268?

"A. Well, I think they were all right.

"Q. What year was it? A. I can't tell you that.

"Q. To what extent may land be impregnated with alkali and not interfere with the production of beets?

(2723) "A. I don't know.

"Q. Do you know whether this land is impregnated with alkali to such an extent as to prevent the successful growing of beets, this O-268?

"A. I think that was the conclusion arrived at on that.

"Q. Now, if you don't know the percentage of alkali that must be present to interfere with the growth of beets what was it that enabled you to determine that this land would not grow beets on account of alkali?

"A. Simply the appearance of it.

"Q. The appearance of what? A. Of the crop.

"Q. The appearance of the beet crop? A. Yes, sir.

"Q. Do you know whether that was attributable to alkali or to the fact that it had not been irrigated as it should have been?

"A. I think the general impression is that it was the alkali.

"Q. That is, do you mean that was your impression, or somebody else's? A. Well, that was my impression, too.

"Q. You say you have had no experience yourself in the growing of alfalfa?

"A. A little, I said, I had a little experience. I have tried it several times.

"Q. You have tried it several times? A. Yes, sir.

"Q. Successfully or unsuccessfully? A. Well, I find it is more a proposition of water than anything else on the land; in fact, you can raise alfalfa in this state in a great many places if you have the water. That is the main thing.

"Q. Do you know what is a good yield of alfalfa to the acre?

"A. Well, I know what is considered a pretty fair yield in certain places.

(2724) "Q. I suppose you only know that from hearsay, what

you have been told? A. Yes, sir.

“Q. Not from any experience?

“A. No, I didn’t handle it myself.

“Q. Did you make any inquiry to ascertain what the yield per acre was on O-268?

“A. No, I don’t think that could be determined very well.

“Q. Do you mean that that is on account of the manner in which they cut it?

“A. Yes, the manner in which they cut it, and some of it is fed green; but looking at it I could form some judgment.

“Q. I understood you to say awhile ago you thought that alfalfa would not last more than 4 or 5 years; what enables you to express an opinion on that? What I mean by that is this, Mr. Parsons: Is that based on what somebody has told you?

“A. No.

“Q. Do you mean that ordinarily an alfalfa planting must be renewed every 4 or 5 years? A. Well, in some places.

“Q. Where, for instance? A. I can’t recall just now.

“Q. Are there places where it does not have to be renewed as frequently as that? A. I think so.

“Q. How long does it last in some cases?

“A. Of course, it will last a long time as far as the mere lasting is concerned, but to make a paying crop of it——

“Q. ——You think it should be renewed every 4 or 5 years?

“A. If I were doing it I would renew it every 4 or 5 or 6 years.

“Q. Every 4 or 5 or 6 years? A. Yes, sir.

“Q. So that this land may produce good alfalfa for a period of six years from its planting,—that that is on 268-O?

“A. I should be very much surprised if this crop that is on this land will last for six years.

“Q. What is that opinion based upon, Mr. Parsons?

“A. Well, that is my opinion of it.”

* * * * *

(2984) "Q. You were present here when Mr. Callaghan was being cross-examined about O-268, in the Pleasanton District, were you not? A. Yes, sir.

"Q. And you heard Mr. Callaghan say, did you not, that notwithstanding the fact that there was a pretty fair stand of alfalfa on O-268 that at sometime in the future it would probably be killed by the alkali? A. I don't remember that.

"Q. You don't remember that? A. No.

"Q. You don't remember that there was anything said about the likelihood of alkali in O-268 eventually killing the crop?

"A. I don't remember that.

(2985) "Q. And you understood that Mr. Callaghan, with whom you have been in constant consultation, was speaking of that land in its present condition, did you not,—that he was discussing conditions existing today? Didn't you so understand?

"A. I don't know; I cannot answer that."

I have called your Honor's attention to Mr. Callaghan's testimony given before Parsons took the stand in which he said, "On last Wednesday I saw this crop."

MR. SEARLS: Mr. McCutchen, Mr. Callaghan testified before we took that trip.

MR. McCUTCHEN: Yes, you are right about that.

MR. SEARLS: I thought you stated awhile ago it was afterwards?

MR. McCUTCHEN: No, I said Parsons testified afterwards.

MR. SEARLS: Yes, Parsons testified afterwards.

MR. McCUTCHEN: And Mr. Callaghan testified before. Before the trip was made, when Mr. Callaghan was asked, "When did you see that land with the crop on it?" He said, "I saw it last Wednesday."

"Q. You cannot answer that? A. No.

"Q. And you were not in consultation with Mr. Callaghan with reference to that very piece of property while Mr. Callaghan was under cross-examination? A. No sir, I was not.

"Q. You say that alfalfa was not growing on some spots when you saw the land in the spring of 1914.

"MR. SEARLS: I beg your pardon, Mr. McCutchen; I don't think he said that; he said there was alfalfa and barley growing there.

"MR. McCUTCHEN: Well, I think I am right about it, Mr. Searls.

"Q. Didn't you say that on some spots the crop was not growing at that time? A. Yes.

"Q. Is it growing on those spots now?

"A. Yes, some of them.

"Q. Do you know that that land has been reseeded since that time? A. I do not.

"Q. You don't know that? A. No.

"Q. Then where crops are growing on those spots now they may be growing as a result of reseeding which took place prior to the time when you saw it in the spring of 1914?

"A. Barley never would, Mr. McCutchen.

"Q. Answer the question; if you say 'no,' that is all I want. Read the question, Mr. Reporter. (Question repeated by the reporter). A. I think not; no sir, I think not.

(2986) "Q. Then you say those places have been reseeded, do you? A. I think they have.

"Q. Well, the result of reseeding or something has been that there are now good crops growing on those particular spots?

"A. Apparently, yes.

"Q. Had those spots been manured after you saw them and before they were reseeded, if you say they have been reseeded?

"A. I don't know.

"Q. I understand you to say that it is the manuring of O-268 that has overcome the effect of the alkali?

"A. I think you are mistaken, sir, I said water and manure.

"Q. Water and manure? A. Yes, sir.

"Q. You did not intend to say that the manure had overcome

the effect of the alkali? A. Yes.

"Q. Did you not say that it was common practice to overcome the effect of alkali by the spreading of manure over the soil?

"A. Yes.

"Q. Will you tell us a place where that was ever accomplished?

"A. On my own ranch.

"Q. On your own ranch? A. Yes, sir.

"Q. You had alkali on your ranch? A. Yes, sir.

"Q. And you overcame the effect of it by adding manure to the land? A. Yes, sir.

"Q. And did you also irrigate the land?

"A. No, I drained it.

"Q. You drained it? A. Yes.

"Q. It was not the drainage that got rid of the alkali, but it was the manure, was it?

"A. Yes, sir, the manure overcame the effect of the alkali.

"Q. Tell us any other land where that experience was had? A. I can tell you districts in general.

(2987) "Q. Tell me any farmer? You say it is a common practice?

"A. They do the same thing in Merritt Island, up the Sacramento River.

"Q. That is to say, there was alkali on Merritt Island and they got rid of it by putting manure on it?

"A. They overcame the effect of it.

"Q. Who was the farmer who did that? Who did that?

"A. That is pretty hard to say now; there are several.

"Q. Give us the name of one?

"A. I have talked with a number of those people; that is the general practice up there.

"Q. Give me the name of one farmer there or anywhere in the State of California who has had that experience.

"A. P. A. Krull.

"Q. Where? A. Merritt Island.

"Q. There was alkali on his land to such an extent as to interfere with the growth of vegetation, was there?

"A. It interfered with his alfalfa, yes.

"Q. And he got rid of that alkali by putting on manure?

"A. He overcame the effect of it.

"Q. He overcame the effect of it? A. Yes, sir.

(2987) "Q. Did he also drain the land?

"A. Yes, that is drained.

"Q. That is to say, there was alkali on it before he drained it and after he drained it there was not any alkali on it; is that not true? A. No.

"Q. That is not true? A. No.

"Q. There was still alkali after he drained it and he got rid of that by putting on manure? A. He overcame the effect of it.

"Q. He overcame the effect of it? A. Yes, sir.

"Q. Mr. Parsons, you have testified to a very varied experience in farming, have you not?

(2988) "A. I don't think so.

"Q. You don't think so? A. No.

"Q. You have said that alkali is a salt, haven't you?

"A. Yes, I believe so.

"Q. You believe it is? A. Yes.

"Q. Can you give the court your notion of what property there is in the manure that dissolves that salt and gets it out of the soil?

"A. I am not a chemist.

"Q. No, you are not a chemist.

"A. No sir; I would not attempt the chemical transformation.

"Q. You are an educated man, however?

"A. Somewhat, yes.

"Q. And you confess your entire inability to make any suggestion to the court of the effect of manure on alkali so as to rid the land of the alkali by the addition of the manure.

"A. Yes, sir.

“Q. Is it your appreciation that the salt which you say that the alkali has leaves the land when you put the manure on?

“A. I don't think so.

“Q. You think the salt stays there? A. I think so.

“Q. What is there that you think is in this salt that kills the plant that is put in the land where the salt is?

“A. I don't know.

“Q. You don't know that? A. No.

“Q. But you do think that if you put manure enough in there that the salt, although it might come in conflict with the plant, would not kill it?

“A. I have not said anything of the kind.

“Q. Do you think it would kill it if it came in contact with it? A. I said that the manure overcame the effects of the salt.

“Q. Now, Mr. Parsons, I simply want to get your notion; let us (2989) assume now that a soil is ideal for the production of plant growth in every respect except that there is alkali in it; and suppose you were to add to that soil any quantity of manure, and you did nothing beyond that to eliminate the alkali from the land, do you think it would produce any more crops because you added that manure? A. It certainly would.

“Q. That is, I am speaking of soil which is ideal in its constituent parts; it would, would it? A. Yes, sir.

“Q. Now, we will take another illustration: suppose you had a box into which you put ideal soil, and into that box you put a lot of manure so as to enrich the soil still more, and then you put some of this salt into it that you call alkali in quantities sufficient in the absence of manure to kill the plant, do you think the plant would thrive although you had the manure in the box with the soil? A. Sometimes.

“Q. That is your idea as a farmer, is it?

“A. Yes, sir. I have seen them raise asparagus in just that way.

“Q. In what way?

"A. By putting plenty of salt in the soil, plenty of salt and plenty of manure.

"Q. Do you want to give his Honor to understand that the salt which you say they spread over asparagus beds was alkali?

"A. It is an alkali, yes.

"Q. It is alkali? A. Yes.

"Q. That is to say, it was common salt.

"A. No, I don't say it was common salt, but I say the effect would be just the same.

"Q. It would? A. Yes, on some things.

"Q. Then this alkali is a good thing under some circumstances, is it? A. In certain places it might help you.

"Q. Where are the places?

"A. Raising asparagus sometimes.

(2990) "Q. How about this land over there? If asparagus were planted over there would the alkali help it?

"A. It might, I think there are better places for asparagus than that, though. Mr. McCutchen.

"MR. McCUTCHEN: Q. Then you think that the addition of common salt to a piece of land would make it alkaline, as you say that land is over there?

"MR SEARLS: I don't think he said that.

"MR. McCUTCHEN: I am asking him.

"A. I don't say that.

"Q. Well, would it?

"A. I don't know. I don't know enough about the chemistry of it to say what the chemical effect is or what alkali is; I don't want to say that. I know certain agricultural conditions, and that is all I do know about it.

"Q. Now, Mr. Parsons, what is that land worth today, O-268? You say it is much better today than it was at the time at which you appraised it. What is it worth today?

"MR. SEARLS: I submit that that is immaterial, irrelevant and incompetent.

"MR. McCUTCHEN: Counsel has called for a comparison, your Honor.

"MR. SEARLS: The valuation is as of December 31, 1913: that is the only thing we are concerned with here.

"THE MASTER: I think the question is a proper one.

"A. It is worth a great deal more than it was when I appraised it.

"THE MASTER: That is what you said before, Mr. Parsons; he wants to know the value of it?

"A. The value of it, the exact value——

"MR. McCUTCHEN: I am speaking of the whole parcel now, O-268?

(2991) "THE MASTER: O-268, the hop-yard property.

"MR. SEARLS: "Q. Your average price, as given by you——

"MR. McCUTCHEN: Now, just a moment, Mr. Searls. I submit that that is not proper. I am asking the witness for his valuation of it.

"MR. SEARLS: He says it is more now than it was then and I was just going to tell him what he appraised it at then.

"THE MASTER: He probably has that in mind, Mr. Searls; I don't think this is proper.

"A. I think that land is worth \$400 an acre today.

"MR. McCUTCHEN: Q. \$400 an acre?

"A. Taking everything into consideration, the fact that there is a dairy under lease, plenty of fertilization there at nominal cost."

MR. SEARLS: I want to call your attention to one thing, Mr. McCutchen: that dairy had been there quite awhile and there was probably a good deal of accumulation of manure and it was not due to one year's product from that cow you were speaking of this morning.

MR. McCUTCHEN: The crop had been there since 1914.

MR. SEARLS: But the land had not been fertilized.

MR. McCUTCHEN: Then, Mr. Searls, that only emphasizes my point that it got that \$200 worth of fertilization in one year.

MR. SEARLS: I also want to ask you, Mr. McCutchen, whether his statement about the effect of manure on alkaline soil was ever contradicted in the record? You had Professor Wickson here and I cannot find in the record that he contradicted it.

MR. McCUTCHEN: No, I don't think he did. I think we all know that stable manure is almost entirely or very largely vegetable.

MR. SEARLS: I should think that it had plenty of vegetable acid in it and that that vegetable acid might neutralize the effect of the alkali. I think we all know that much about it even without knowing anything about the chemical condition of the soil.

MR. McCUTCHEN: You know Professor Wickson said that you get rid of alkali by drainage. That is the way they got rid of the alkali in the Merritt Island case; and that is the way Mr. Parsons got rid of it on his own ranch.

(2996) "Q. How many crops will O-268 produce now?

"A. I don't know.

"Q. You don't know? A. No.

"Q. You told Mr. Searls this morning, didn't you, that Calaveras lands, with irrigation, would product five crops per annum? How do you know that?

"MR. SEARLS: He said he estimated that they would.

"MR. McCUTCHEN: Oh, no, I think he said they would. Did you not say they would?

"A. I don't think that that was the question, Mr. McCutchen.

"Q. Did you not say that without irrigation—

"A. (intg.) In my estimation—I think the question was, in my estimation, how many crops would you grow in Calaveras without irrigation.

(2997) "Q. What do you mean by your estimate; what is your estimate? A. That is my opinion of it.

"Q. That is your opinion? A. Yes.

"Q. That is, your opinion was that without irrigation alfalfa in Calaveras would yield two crops per annum?

"MR. SEARLS: Three, I think.

"THE MASTER: I think he said two.

"MR. McCUTCHEN: And with that irrigation it would yield five?

"A. Yes, I think I said that.

"Q. How many tons would that mean per annum?

"A. In Calaveras?

"Q. Yes.

"A. I should say in my estimation the five crops would produce five tons of hay?

"Q. That is to say, each cutting would only produce one ton?

"A. I think so.

"Q. Now, on what do you base that?

"A. What I have seen in other localities.

"Q. Where? A. Up the Sacramento River.

"Q. Does that land produce only one ton to the cutting?

"A. Some places do produce more.

"Q. Some places produce more? A. Yes.

"Q. Where is the place where it produces only one ton to the cutting? A. Merritt Island.

"Q. That is this alkali land you were telling us about, isn't it?

"A. No, not all alkali land.

"Q. Not all? A. Merritt Island.

"Q. Was it on the alkali land that it produced one ton to the acre per cutting? A. I don't think so.

"Q. Are you in doubt about it? A. Of its producing that?

(2998) "Q. Are you in doubt whether that was alkali land, or not? A. No, I am not in doubt about it.

"Q. That is, there was no alkali on that land?

"A. I do not say that.

"Q. Well, was it or not alkali land?

"A. I said this morning that on Merritt Island there were conditions where there was alkali in the soil, and it had been overcome; the bad effect of the alkali had been overcome by

manure, and that is just exactly what I mean now; and on some of the land that has been overcome by manure on Merritt Island, you will find pretty good crops of alfalfa."

* * * * *

(3000) "Q. Now, Mr. Parsons, will O-268 produce any more alfalfa to the acre per annum than the bottom lands in Calaveras Valley?

"A. Yes.

"Q. How much more?

"A. I cannot tell you how much more; I don't know how much more, but in my estimation O-268 would produce with present conditions more alfalfa than the land in Calaveras Valley."

I submit that it is hardly fair to condemn that land in Calaveras Valley on the experience of these land owners on Merritt Island whose lands were impregnated with alkali to such an extent according to the witness that they had to use manure upon them to get rid of the alkali in order that they might grow alfalfa.

Parsons' Descriptions of Soils.

I have taken from the record some excerpts to show Mr. Parsons' notion about the soils, some of which he was considering in this case. That reminds me that both he and Callaghan have made a very labored effort to show that the soil on one side of the Arroyo Valle—in the Pleasanton district I am speaking of now—is radically different from the soil on the other side. Callaghan and Parsons do not jibe with reference to that, but they do as a rule say that the lands south of County Road 2000 were very much better than the lands on the other side. I submit it is apparent to anyone who will look over the country that there is no reason why the lands on one side of that creek should not be just as good as the lands on the other side.

At page 2728 he said (Ab. 735):

"R-268 * * * * * consists of alluvial soil. The soil on 280 adjoining is very much the same, although I think it is a little better. My description of R-268 is that the soil is sandy loam."

* * * *

(2729) "Q. And you describe 280 as a deep loam, don't you?

"A. Yes, sir.

"Q. And you describe R-268 as a sandy loam, don't you?

"A. Yes, sir.

"Q. Which is the better soil, as a rule, a deep loam or a sandy loam?

"A. Well, I would say the deep loam was better. I think the soil on 280 probably is a little better than on R-268.

"Q. And yet you value 280 at \$400 an acre, and you value R-268 at \$410, don't you? A. Yes, sir.

"Q. If 280 is better than R-268, why do you value R-268 higher than 280? A. It faces on two roads; it is closer to town.

"Q. Then 280 acre for acre is better land than R-268, is it?

"A. As to the intrinsic value of the land I should say yes, probably."

The witness then stated that there was likelihood that a portion of 280 might be washed out by the creek.

(2730) "Q. And that was the only reason for making that difference, was it? A. Yes, sir.

"Q. How does the land in 280 compare with N-239, M-239, L-239 and 276? * * * *

"A. The land is better on the south side of the creek—there is no question about that.

(2731) "Q. You have described 280 as a deep loam; is it a dark or a light loam?

"A. It is a lighter loam than the loam south of the creek.

"Q. Do you mean lighter in color or lighter in texture?

"A. Both, I think.

"Q. How about the depth of the soil? Is the depth of the soil on 280 any less than it is on these other tracts?

"A. I don't know.

"Q. What is there in these other tracts—the four I have just called your attention to, that makes them worth 20% more in your opinion than 280?

"A. Well, I think they are better lands.

"Q. What will they produce that 280 will not produce?

"A. I think they will produce more of most anything.

"Q. Well, take any particular crop, for instance?

"A. I think they would produce more beets than the other land will, without irrigation.

"Q. How much will they produce in beets?

"A. I don't know; I would look for a pretty nice crop of beets down south of the creek.

"Q. Would you look for a good crop on 280?

"A. Not particularly good, no.

"Q. What is your criticism of 280 for beet production?

"A. Well, I think it would dry out.

"Q. You think it would dry out? A. Yes, sir.

"Q. And you think that these others would not dry out?

"A. I don't think so, not as quickly.

"Q. You think they would not need irrigation?

"A. I doubt if they would need irrigation at all; they might.

"Q. What do you know about the water level or the water table on the two tracts?

(2732) "A. Very little, I should say, guessing at it, that the water table was nearer the surface in this land south of the creek than north of the creek.

"Q. But you don't know anything about it, that is, from any investigation?

"A. No, I never looked up the engineering part of it.

"Q. Is 280 good for vegetables and small fruit?

"A. With water, yes.

"Q. Are those other four tracts good for vegetables and small fruits without water? A. With very much less water.

"Q. How much less? How much water, for instance, would it take? A. I don't know; I could not tell you that.

"Q. Mr. Parsons, what is there that enables you to say that one of these tracts requires more water than the other?

"A. The nature of the soil.

"Q. Let us take that element first: what is the difference in the nature of the soil that would require more water on 280 than on the other tracts?

"A. I think it is just a little heavier and nicer loamy soil south of the creek than it is north of the creek."

Now, bear this in mind, because Callaghan tells us that the superiority of those soils south of the creek lay in the fact that they were light and sandy and the soils on the other side were heavy.

"A. I think it is just a little heavier and nicer loamy soil south of the creek than it is north of the creek.

"Q. That is, you think it would hold water longer; is that what you mean? A. Yes, sir.

"Q. Yet you do not know that from any experiment made by yourself, do you, or any experiment you have seen others make?

"A. No sir, just my judgment on the land.

"Q. And from any examination of the soil you don't know whether there is any difference in the texture of the soil that is on 280 as compared with the other four tracts, do you?

"A. I would say it is heavier land south of the creek than north of the creek."

And Mr. Callaghan said, "I would say it is lighter land south of the creek than north of the creek."

MR. SEARLS: Do you notice the difference your own witnesses make between those lands, Mr. McCutchen?

MR. McCUTCHEN: You mean in value?

MR. SEARLS: Yes.

MR. McCUTCHEN: I am not talking about that, Mr. Searls, I am talking about the method the witness used in arriving at these valuations. Mr. Gale placed his value on what he knew of sales in the locality. This man knows nothing of sales in the locality; from start to finish he has not told us of a single sale.

MR. SEARLS: And the reason he did not tell you of one

was because Mr. Callaghan had already put them in evidence and I stated that at the time of my examination of him.

MR. McCUTCHEN: Mr. Callaghan was very careful to tell us he did not pay any attention to prices paid by the Spring Valley Water Company in arriving at his valuations of these lands.

MR. SEARLS: Neither did Mr. Gale.

MR. McCUTCHEN: Well, Mr. Searls, I don't think we will get anywhere by this discussion. I started out to show this, that your witnesses placed a valuation on these lands based on what the lands would yield; that is their basis of valuation all along.

(2733) "Q. What is the difference in elevation between 280 and these four tracts I have called your attention to?

"A. I don't know.

"Q. Is there any? A. I don't know that.

"Q. What, in your opinion, made this land in there, these four tracts south of the creek; was that soil made by silt brought down by the Arroyo Valle, or in the Arroyo Valle? A. Yes, sir.

"Q. And the soil of 280 was made in the same way, wasn't it?

"A. I think the Tassajara helped them along a little bit in this part south of the creek.

"Q. You think the Tassajara helped there?

"A. Yes, sir, I think so.

"Q. Where did it come in? A. Up above.

"Q. How far from this land? A. Quite a little ways.

"Q. How far, approximately?

"A. I should say about a mile.

"Q. Do you think that any detritus brought down by the Tassajara was deposited on these lands?

"A. I do; the Tassajara and the Mocho.

"Q. Mr. Callaghan testified that he thought the Tassajara brought down alkali; is that your opinion, too?

"A. I don't know.

"Q. You don't know? A. It looks that way.

"Q. And yet you attribute the richness of these four pieces as compared with 280 to the fact that they benefited from the silt brought down by the Tassajara? * * *

"A. I don't say that; I say that this south of the creek is made up from the Mocho and the Tassajara and the Del Valle (2734), and it made a pretty fine piece of ground there; just how it came about I don't know, or which put it down there first I don't know."

The witness then stated that he did not know what opportunity he had had to compare crops on the land south of County Road 2000, and on the best of the land north of there, or north of the Arroyo Valle; that he had seen those lands for a good while, but did not remember having seen lands south of the creek planted to the same crop which land north of the creek was planted to.

(2734) "Q. When you say that you think this land south of the creek will produce better crops, does that rest entirely on your own opinion or is it based upon observation?

"A. It is based on observation.

"Q. Now, then, what crop have you seen growing?

"A. I cannot tell you.

"Q. You cannot tell us?

"A. No. My memory is not good enough for that.

"Q. You cannot tell us the lands on which the crop grew, or the character of the crop? A. No.

"Q. Now let us see if we can get at it in another way. What crops would these lands south of the road have to produce and in what quantity to make them worth \$500 an acre?

"A. It is not what they will produce; it is the amount they will produce.

"Q. I say, what crops and in what quantity?

(2735) "A. I say this: I say that this land south of the creek will raise beets in my estimation safely—fairly safely anyway, will raise tomatoes and cucumbers, but I would not

think of putting tomatoes and cucumbers north of the creek.

“Q. Why not? A. Because I don’t think they would stand it.

“Q. Why not? A. The soil is not heavy enough.”

This is the soil that Mr. Callaghan characterized as a heavy soil.

“Q. You said awhile ago the fact that they would not grow tomatoes and cucumbers was due entirely to climatic conditions.

“A. Oh no, I don’t say that entirely. The same heat would affect them south of the creek as north of the creek—I will admit that.

“Q. How much will the land south of the creek on which you placed a valuation of \$500 an acre produce in beets?

“A. I don’t know.

“Q. How much will 280 produce in beets with good tillage?

“A. I don’t know that, but there would be quite a difference.

“Q. How do you know there would be a difference?

“A. On account of the nature of the land.

“Q. You testify now that 280 is a deep loam? A. Yes.

“Q. And that describes an excellent soil, does it not? A. Yes.

“Q. It describes a very rich soil, doesn’t it? A. Yes.

(2736) “Q. Now I ask you, how much in beets would such a soil as that produce with proper tillage?

“A. North of the creek?

“Q. On 280. A. I don’t know.

“Q. Mr. Parsons, can’t you give us any impression about what 280 will produce in beets with proper tillage?

“A. No. I cannot give you any estimate because there are too many conditions altogether there. It will produce one thing one year and another thing another year.

“Q. I am not asking you about that; I am asking you to confine yourself to beets. Under good conditions, under normal conditions, and with ideal tillage, what will 280 produce in beets, if you know? A. I don’t know.

“Q. Under normal conditions and with ideal tillage, what

will M-239, N-239, and L-239 and 276 produce in beets?

“A. I think they will produce as many beets as any tract in the whole Pleasanton district.

“Q. Is it fair to say, Mr. Parsons, that so far as beet culture is concerned it is beyond your ken and you don't know anything about it; is that fair? A. I don't know.

“Q. As applied to these particular lands, you don't know what any of them will produce in beets under proper tillage, do you?

“A. No, actually I don't because I have not raised beets on that land.”

* * * * *

(2755) “Q. Is there any alkali in 272, 273 and 277?

“A. I think so, in the back part of it.

“Q. The back part of all three of them? A. I think so.

“Q. You also said, did you not, that there was alkali in the triangular piece lying below 272, 273 and 277? A. Yes, sir.

“Q. Now, notwithstanding the fact that there is alkali in 272, and 277, you valued those at \$450 an acre, and you valued 280, where you say there is no alkali, at \$400 an acre?

“A. The alkali in those little pieces I didn't consider cut much ice.

“Q. What is the advantage of 272 and 277 over 280?

“A. They are small subdivisions.

“Q. They are small subdivisions?

“A. Yes, sir; small holdings.

“Q. What would prevent the owner of 280 cutting them into small holdings? Supposing you had been asked to value 280 in four subdivisions instead of one, would you have made the four subdivisions any more valuable per acre?

“A. No, but the conditions exist on the ground there just as we found them.

“Q. That is to say, you mean there are fence lines there?

“A. Yes, sir.

“Q. Those are the only conditions, so far as subdivisions are concerned, aren't they? A. Yes, sir.

“Suppose those fences were removed, were taken away, and those three holdings, 272, 273 and 277, were thrown into one field, would that make them any less valuable per acre?

(2756) “A. As far as the market value goes, yes.

“Q. So that if you had found those two pieces in one field you would have put a lower price per acre upon them than you actually placed? A. I think I would, yes.

“Q. How much is added to these pieces per acre because of the fact that those division fences exist?

“A. That was not the question that entered my mind; I don't know what would be added on account of the fences.

“Q. How much less would they be worth if they were in one ownership and under one fence than if in two ownerships and under two fences?

“A. They would be worth about two-thirds.”

Dampness of Soil (Parsons).

Now, for the purpose of showing what I think are unsound and insupportable reasons given by the witness for putting certain values upon certain lands I will read further from the record, beginning at page 2763:

“Q. Then all of these lands which you say are best adapted to pasture could be cultivated if they could be drained; is that it?

“A. If they could be drained and the water kept off, I presume, yes, get rid of the water. I don't know whether S-268 can be drained.

“Q. Did you consider that at all?

“A. Yes, I thought the matter over.

“Q. Does its susceptibility to drainage have anything to do with its value? A. It might have.

“Q. Does it in this particular case, in your mind, as an expert?

“A. I am not an expert on drainage.

“Q. Does it not occur to you that Merriwa stock farm could

be drained very easily and at comparatively little expense?

"A. I don't think so."

* * * * *

(2764) "Q. During what year have you seen that land when it was so wet that it could not be farmed?

"A. I cannot tell you.

"Q. Have you ever seen it when it was so wet that it could not be farmed? A. Yes sir, I think so.

"Q. For what length of time was it in that condition?

"A. What portion of it?

"Q. Any part of it.

"A. I cannot tell you that; I didn't keep track of that."

* * * * *

"Q. Do you say that S-268 cannot be drained?

"A. No, sir.

"Q. Do you say it can be drained?

"A. I presume it can be drained.

"Q. If it were drained, would it be worth much more than the price which you have put upon it? A. I think it would.

"Q. How much more? A. I don't know.

"Q. Would it be worth \$400 an acre, if it could be drained?

"A. I don't know that."

* * * * *

(2765) "Q. Do you know for what length of time the streams overflow, so that any water gets from them upon the surface of that land? A. I have not kept track of that."

* * * * *

"Q. What, in your mind, is the objection to the 40-acre piece in 283, which induces you to put a value of only \$200 an acre on it? That is the small Schween piece.

"A. I consider that rather wet up in the northwest corner.

"Q. How much of the northwest corner is wet?

"A. I could not tell you; considerable of it, though.

"Q. Ten acres of it? A. Yes, more than that.

“Q. Twenty acres?

“A. No, I would not say 20 acres; I would say about ten or fifteen acres probably.

“Q. Ten or fifteen acres? A. Yes, sir.

“Q. How about the remainder of that 40-acre tract, is it free from water?

“A. I think so.

“Q. What kind of soil is in that 25 acres, assuming it fair to say that there are 25 acres, in view of your previous answer?

“A. Well, that is a loamy soil.

“Q. A fine soil? A. Yes, sir.

“Q. What is there to prevent the production of fine crops on that 25 acres?”

He had just said it was a fine soil. Listen to this answer:

“A. I think it is rather a light soil; I do not think it is a particularly productive soil.

“Q. Upon what do you base that statement, that it is not particularly productive? A. From the appearance of the soil.

(2766) “Have you ever seen it worked. A. I don't think so.

“Q. Have you ever turned the soil over to examine it at all?

“A. No, sir.

“Q. You have never done anything at all except to observe the natural vegetation on it, have you?

“A. Yes, I have walked in, through it and over it and around it.

“Q. Does it not produce an abundant growth of natural vegetation? A. It might in certain years.

“Q. Have you ever seen it when it had a very rank growth of natural vegetation on it? A. I don't think so.

“Q. Have you ever seen it when it had a fine growth of natural vegetation. A. I might have.

“Q. Would you put a value of \$200 an acre on a piece of land for pasture that did not produce fine natural vegetation. A. No.

“Q. Then you agree that it does not produce fine natural vegetation, do you not?

“A. I didn’t say that was pasture land.

“Q. What did you say it was?

“A. I don’t think I called that 40 acres pasture. * * * *

“Q. Look and see what you called it. Mr. Olney said you described that as suitable for alfalfa and grain. A. Yes.

“Q. That is, do you mean the whole 40 acres?

“A. I would be a little careful about putting alfalfa in the 15 acres I spoke about, it would be a little too wet there, but the rest of it, if you could get water on it, would grow alfalfa all right.”

* * * * *

(2767) “Q. During your observation of 283—the 40-acre tract—to what use has it been put?

“A. Well, I think grain, and I think pasture, if I remember correctly.

“Q. Was it planted this year?

“A. I don’t think it was. * * * I think it was last year, but not this year.

“Q. Is the soil on the 40-acre tract of 283 a deep soil?

“A. Yes sir.

“Q. Would you call it a rich soil?

“A. I would call it pretty good soil, yes.

“Q. Would you call it a fine soil?

“A. Not a particularly productive soil, I would not say.”

This is right adjoining the land that produced barley at the rate of 35 sacks to the acre.

“Q. Not a particularly productive soil—just what do you mean by that? Do you mean it will not produce good crops with good tillage?

“A. Yes; I would not consider it a heavy producer, or, as a farmer says, strong soil.”

Soil that he has never seen turned over and soil that lies right alongside of land that according to Callaghan produces 35 sacks of

barley to the acre and which Callaghan says is a fine yield.

THE MASTER: What piece are you talking of now, Mr. McCutchen?

MR. McCUTCHEN: The 40 acre Schween piece.

THE MASTER: It is some distance above the main Schween ranch; it is next to the Merriwa stock ranch?

MR. McCUTCHEN: Yes, it is farther away than I thought.

“Q. Then you place your valuation upon it upon the understanding that it would not be a particularly productive soil?

“A. Yes.”

MR. SEARLS: Mr. McCutchen, do you still insist upon the statement that it was right next to the piece as to which Mr. Callaghan spoke of the 35 sacks to the acre?

MR. McCUTCHEN: No, his Honor corrects me in that.

Hadsell Property (Parsons).

Now, I next come to Parsons' consideration of the Hadsell tract. He says, at page 2574: (Ab. 695)

“The level land in the plot is of gravelly loam, of uneven texture. Too much so to be a success with alfalfa and vegetables, but fair for hay and grain.”

He says that he valued the 97 acres in walnuts in the Hadsell place at \$350 an acre, which includes the value of the trees, and that he would put just the same value on it without the trees.

(2784) “Q. In other words, the land is worth \$350 an acre with or without the trees?

“A. Well no, I would not say that either; I would give the land a little advantage on account of the trees; I would say \$200 for the land and \$150 for the trees.

“Q. Then the value which you put on the 97 acres in walnuts without the trees is \$200 an acre. A. Yes sir.”

(2785) The witness stated that the 550 acres of gravelly loam which he valued at \$200 an acre, included all of the land between the walnut orchard on the west and the Mission San Jose road on

the east, and County Road 1469 on the north, and Calaveras Creek on the south.

“Q. In other words, you have put on the flat farming land in the Hadsell piece which lies east of the walnut orchard, a valuation of \$200 an acre, have you not? A. Yes.

(2786) “Q. Is it not a fact that the land in the walnut orchard and the land toward the western end of this tract is considerably more valuable than the land in the 550 acre tract, taken as a whole? * * *

“A. I doubt if it is considerable, it may be a little more valuable.

“THE MASTER: Mr. Olney, he also includes in the 550 acres of gravelly loam, as I recall it, the field across the creek.

“MR. OLNEY: Yes. Didn't I make that plain?

“THE MASTER: No.

“MR. OLNEY: The field across the creek?

“THE MASTER: Yes, and down toward Sunol Dam, between the Alameda Creek and the railroad track there.

“Q. That is the fact, is it not, Mr. Parsons?

“A. Yes, your Honor.

“MR. OLNEY: Q. What is the character of that particular field the Master has just called your attention to? How will that compare with the walnut orchard?

“A. I don't think it is as good.

“Q. The land in and about the walnut orchard is as valuable land as there is there is it not, in and around the walnut orchard and the cottage? A. And I have given you that.

“Q. I am asking you about the fact, Mr. Parsons?

“A. I think that is a little better.”

Now, why does he think it is a little better? There is a piece of land which to the naked eye is all of a kind. Our common sense tells us it was all formed in the same way. There cannot be any question about that. Now, I don't want to be uncharitable but the only reason that Mr. Parsons put it that way was that the

walnut orchard and the nursery existed there, and there was a demonstration that the land upon which they were growing must be good land.

“Q. You testify that the value of the land in the walnut orchard and immediately about the cottage there is \$200 an acre, and you have also put a valuation of \$200 an acre on (2787) this other land which you say is not as good; then should not you have a little more than \$200 an acre for the land that is in the walnut orchard and in and about the cottage?

“A. That is just what I have done exactly. Right in your totals you have got it. It may be a case of bookkeeping, Mr. Olney, but it is there just the same.

“Q. You testify that your value of \$350 an acre in the walnut orchard was \$200 for the land and \$150 for the trees?

“A. Yes, sure; but I say this, if you want to split it up that way, that is about the way to split it up; but the value is there, and my valuation is there just the same. It is \$207,267.70. You have got it.

“Q. Then your total of \$207,267.70 would be the value of the Hadsell place with or without the walnut trees?

“A. Yes, with or without.

“Q. That would mean, would it not, Mr. Parsons, that in effect you are placing a valuation of \$350 an acre on the land in the walnut orchard without the trees on it; that is what it means, does it not?

“A. It depends altogether on how you look at the walnut orchard; if you consider the walnut orchard an asset, you have a walnut orchard there started, a young walnut orchard, for \$350 an acre; if you do not consider it an asset you have the land there that shows a young walnut orchard planted at \$350 an acre.

“Q. Mr. Parsons, I am not considering that, I am not asking you that. You testified that the total value of this tract is the same with or without the walnut orchard. A. Yes sir.

“Q. And you have also testified that you put a valuation of

\$350 an acre on the land in the walnut orchard? A. Yes sir.

“Q. That means that your valuation of \$350 an acre on the land in the walnut orchard is with or without the walnuts?

(2788) “A. Yes sir.

“Q. The walnuts cut no figure; that is correct, is it not?

“A. Yes, in my estimation.”

* * * * *

(2790) “A. * * * * I would rather have I-239 than the walnut orchard.

“Q. Although one-third of I-239 is the reddish hill?

“A. Yes sir.”

* * * * *

“Q. Do you consider the walnut trees on this particular tract (2791) of land a detriment or an advantage?

“A. I don't consider them an asset at all.

“Q. Do you consider them a detriment?

“A. Not much of a detriment because it would not cost much to take them out.

“Q. You practically have not considered them at all?

“A. I don't put much valuation on walnuts; they may grow and they may not; after they grow they may bear and they may not.”

On re-direct examination the witness said they did not add anything to the intrinsic value but they might add something to the market value.

Parsons' Segregation and Valuation of Calaveras Lands.

Reading from page 2878:

“Q. Now, Mr. Parsons, I want to take up and consider some of the flat valley lands in the Calaveras; whereabouts in the valley, on what particular pieces, are the richest lands in Calaveras Valley, in your judgment?

“A. I would want to think about that, Mr. Olney; I couldn't answer that right off the reel.

“Q. You know where the county road from Milpitas comes

down into the valley; are the lands which lie to the north of that road, if it were extended across the valley, more valuable than the lands which lie to the south, as a general rule, more fertile as a general rule?

“A. I should say so as a general rule, yes, sir.

“Q. What are the limits, so to speak, in a general way—I don’t expect you to give it to me with absolute accuracy here—of the rich valley lands in the Calaveras Valley?

“A. I should say north of the extension of this road across the valley.”

* * * *

“Q. That is, the land in parcel 331 you would not consider as valuable as the same flat valley land in 330?

“A. No, I don’t think I would.

“Q. I think I am correct in the statement that the orchard near their house is on 321; do you remember that orchard, Mr. Parsons, with the peaches? A. There are two orchards.

“Q. This is the orchard near the creek, and with the immense sycamore tree by the house; do you remember that. A. Yes, sir.

(2879) “Q. I think that was on the 321; in fact, I am quite sure of it.

“Q. How does the land which is in and about that orchard and which is contained in 321, the Campbell place, compare with the flat valley land in 330 immediately to the south—the John Sherman place. A. It is pretty much the same kind of land.

“Q. It is pretty much the same?

“A. Yes, some of it is a little better than other parts.

“Q. The road across the valley runs along the boundary line between the John Sherman place, Parcel 330, and the Sam Sherman place, Parcel 331; you remember the field which runs between that road and the orchard on the Campbell place, Parcel 321, don’t you? A. Yes.

“Q. That is a good field, is it? A. Yes.

“Q. Is there any difference between that field and the land in

the orchard? A. Do you mean just the land in the orchard?

"Q. Yes, or the valley land.

"A. It is pretty much the same thing; there might be a little difference.

"Q. If there is a little difference, which way does it lie, which is the more valuable?

"A. I will have to look at my notes in order to ascertain that.

"Q. Well, look that up, Mr. Parsons, and see what your notes show. And also, in that connection, look up parcels 323, 324 and 325. Now, Mr. Parsons, are you in a position to compare, for instance, the flat valley lands we will say starting with the Sam Sherman piece and running north as far as the Gaines piece, Parcel 325? A. Yes, sir.

"Q. How do they go?

"A. The Sam Sherman place I put a valuation on—

"Q. It is not a question of what valuation you put on it; the question is, take the flat valley land in and of itself, and make a comparison; is it all the same in that section? (2880) A. No.

"Q. Now tell how it runs.

"A. The land south of the road entering the valley from Milpitas, called the Sam Sherman place, is of less value than the land to the north of that.

"Q. Is there any variation in character in the valley land to the north of this road which you speak of?

"A. In a general way, the Carson place, or 321, I think is rather better than 330; that is, the valley land itself.

"Q. We are speaking of the valley land alone. A. Yes.

"Q. Now take the Harris and Ham places, which are 324 and 323, I believe; how will they compare with the Campbell place? We are speaking of the flat valley land only.

"A. I should say about the same.

"Q. About the same as the Campbell place?

"THE MASTER: As the Campbell place, Mr. Olney?

"MR. OLNEY: Yes, your Honor.

“THE MASTER: 321 is the Campbell place—yes, that is right.

“MR. OLNEY: And these two places I have asked him about are immediately to the north.

“Q. Now, going down on into the Gaines place, Parcel 325, and taking for instance the land in and about the prune orchard in the Gaines land— A. That is good land.

“Q. How will that compare with the Ham and Harris land? We are speaking solely of the flat valley land.

“A. That would be about the same, I think.

“Q. And take the land in Parcel 322, the flat land in Parcel 322, the Pomeroy place, how will that compare with the flat land in the Gaines place, or in parcel 324?

“A. I don't think there is any real flat land in 322.

“Q. You don't?

“A. I don't think there is, Mr. Olney, not much.

(2881) “Q. Well, let us get at that, Mr. Parsons. The Pomeroy place is the place where there is now a house on the west side of the road running north and south through the valley; there is a house right in there near the creek, isn't there?

“A. As you go along there?

“Q. Yes.

“A. I don't remember that. There is a house up in the canyon. There is very little right along in here that would be flat land. You cross a little bridge right here, you cross Pomeroy creek and go across here and then you can turn down into the valley from that creek.

“Q. The road is on the east line of this tract, 322, isn't it?

“A. Yes, just about.

“Q. And isn't there some flat land which runs up the sides of Pomeroy Creek.

“A. Yes, but not a great deal of it, though.

“Q. How much would you estimate it?

“A. All of the flat land in there I should not think would be over 15 acres.”

* * * * *

“Q. Take what flat land there is there, how will it compare with 324 and 325?

“A. It is good land, I would not call it quite as good land as down the valley.

(2882) “Q. You would not?

“A. I don't think so. That is a nice little place there, though.

“Q. Mr. Parsons, referring to Parcel 331, you place a valuation of \$125 an acre on that, do you not?

“A. \$125 an acre, yes, sir.

“Q. You describe it in this way: Most of it in the floor of the valley, the south side extending up onto the hill; two-thirds probably included within the contour of the reservoir can be farmed to hay and grain; soil light loam with gravel streaks, especially along the eastern side; the soil is not rich in fertility; it is friable and mixed with considerable gravel.

“A. I think you are reading from somebody else's notes, Mr. Olney, I don't say anything about friable soil in my notes.

“THE MASTER: You are probably reading an abstract of the direct evidence; there may have been a question asked him as to whether it was friable and he testified to it; if so, that would not be found in his notes.

“THE WITNESS: I am willing to put it in my notes, if that will help matters any.

“Q. That is the only difference there is, Mr. Parsons?

“A. Yes, I think that is about it.

“THE MASTER: Well, the witness says it is friable, anyhow.

“MR. OLNEY: * * * * In other respects, that corresponds with your notes, does it, Mr. Parsons? A. Yes.

“Q. I would like you to take one-third of this tract which you say is without the contour of the valley and place a valuation upon it. (2883) By the way, what character of land is it?

“A. Which side?

“Q. That which is outside the contour line. Take the portion of the Sam Sherman place, Parcel 331, which is not flat valley land, and you say that that is about one-third of it, I ask you what the character of that is? A. Rolling hills.

“Q. What valuation per acre would you put upon it? You know the character of the land, don't you, Mr. Parsons.

“A. Yes, sir.

“Q. What value would you put on those rolling hills that form practically the south and west ends of the Sam Sherman place?”

Now, again, I am uncharitable enough to think that Mr. Parsons was very guarded in these answers because he knew from the cross-examination of Mr. Callaghan that we claimed that their valuations of the hill farming lands were altogether too low, and he was going to be on the safe side.

“A. I would say \$20 an acre, \$20 to \$25 an acre.”

* * * * *

“One-third of 160 would be, say 50—we will call it 60 acres, which you value at \$20 an acre, that is \$1200; then the balance of your value would be in the flat valley land, wouldn't it?

“A. Yes, sir.

“Q. And you placed a value on the entire tract of \$20,000?

“A. Yes, sir.

“Q. That leaves us the value of the flat valley land, \$18,800, for 100 acres, doesn't it? A. I guess so.

“Q. And that means that the value which you placed on the flat valley land there is approximately \$188 an acre?

“A. Yes, I guess so.

“Q. Does that correspond with your idea of about what it is?

“A. I think it is too high.

“Q. You think it is too high? A. I think so.

“Q. This is another place where you got it too high, is it?

“A. Yes, the Sam Sherman place. When you get to \$180 an

acre for flat land on the Sam Sherman place, you are paying too much money.

“Q. How about your valuation of \$125 an acre on it as a whole, do you think that is too high? A. It is plenty high.

“Q. Do you think it is too high?

“A. I don’t want to change my valuation, but when you come to segregate it like this, I think it is pretty high, pretty high, yes.

(2883½) “Q. Now, just take it at \$125 an acre, is that too high? A. I think it is.

“Q. What value would you put on it?

“A. I am going to put on it \$125 and stay with it.

(2884) “Q. * * * * * How much land is there on the east end of Parcel 330 which is not flat valley land? A. Not very much.”

I want to suggest to your Honor in that connection that if Mr. Parsons had known his business he would have had no difficulty in making a segregation of these parcels and putting a value upon each of his units the aggregate of which would have approximated the value he put on the entire tract.

“Q. What would you say?

“A. Roughly speaking, 20 acres.

“Q. I call your attention to the portion of Parcel 330 which is in section 31; judging by the map there would be about 35 acres in that section, wouldn’t there?

“A. I was figuring 40 acres; I was just taking half of it; 35 acres would probably be a little closer to it. Call it 35.

“Q. And you think that only about 20 acres of that would be what you would call hill land as distinguished from the flat land?

(2885) “A. Yes, I think 20 acres would be about right; maybe a trifle less than that.

“Q. What value would you put on that 20 acres?

“A. Oh, I think \$15 an acre.”

* * * * *

(2886) “Q. Now, take the 80 acres, or a little more than 80

acres, which form the easterly portion of Parcel 321—and I am asking you now, Mr. Parsons, without reference to your notes, how that land compares with the easterly portion of Parcel 330 outside of the valley, the floor of the valley. Are they of the same general character, or not?

“A. The same general character, yes.

“Q. Is there any difference in value between them?

“A. There might be in connection with the rest of it, yes.

(2887) “Q. Taking them as they are—

“A. I didn't divide this up into 20-acre pieces and say this piece was worth so much and the next 20 acres was worth so much, or anything of that kind; I didn't make any segregation of that kind.

“Q. I will ask you if the land— Mr. Parsons, are you referring to your notes again?

“A. Yes, I was looking at my notes.

“Q. I am asking you these questions without reference to your notes. I am asking you if the 80 acres which form the east one-half of Parcel 321, so far as its general characteristics are concerned and the elements which enter into a valuation, is the same as that of the easterly portion of Parcel 330 above the floor of the valley?

“THE MASTER: If you don't remember, Mr. Parsons, just say so.

“A. Well, I don't remember exactly. It is pretty hard to remember 20 acres out of a section of land where you have been over it so much.

“MR. OLNEY: Q. Now, look at your notes, Mr. Parsons, and see if from your notes you find there is any difference?

“A. I should say that the land in the east one-half of 321 is better land.

“Q. In the east one-half?

“A. In the eastern portion of 321; that is what you are trying to get at.

"Q. I mean the portion of 321 which lies in Sections 30 and 31.

"A. Yes, that is about a little over 80 acres?

"Q. Yes, a little over 80 acres.

"A. I would say that is better land, yes, sir.

"Q. You have described those acres as follows: Light shallow soil over nearly the entire area; rock outcroppings; (2888) land inclined to be steep, with a growth of sage-brush on the east side of the Calaveras Valley. You place a value of \$25 an acre on it?

"A. Yes.

"Q. The portion of section 330 which is in section 31 you describe as follows: rough hill pasture, cut by a deep ravine with sage-brush. That is a piece over on the east side of the valley?

"A. Yes, sir.

"Q. Your idea is then that the price of \$15 an acre which you put on these 20 acres is approximately correct?

"A. I think so. You will notice that I say cut by a deep ravine; it is a deep ravine and it is very steep. That point that runs out there is very steep. I have been up and down there. There is very little pasture on that.

"Q. Now, take the portion of 330 which lies in section 35, on the west side of Parcel 330, what is the acreage in that, approximately? It is not contained in your description?

"A. I think 70 acres.

"Q. You are acquainted with Milpitas road coming down into the valley, aren't you? A. Yes, sir.

"Q. When that road comes down close to the floor of the valley, or really at the floor of the valley, it turns and goes to the north, doesn't it? A. Yes, sir.

"Q. And the turning point is practically where the road as extended on Map 18 would meet the easterly line of f-268, extended northerly? A. I think that is about it.

"Q. And from there it runs in a generally northwesterly direction, so to speak, down the valley, doesn't it? A. Yes."

(2889) "Q. That road runs along the line between the hills and the floor of the valley, doesn't it?

"A. Yes, just about, I think.

"Q. Having determined in this way the limits of the land in section 36, in parcel 330, above the floor of the valley, will you estimate approximately how much more there is of the land above the floor of the valley in Section 36?

"A. It is pretty hard to get at anything very accurate with a map of this kind.

"Q. Well, you can come somewhere near it?

"A. I would say about 82 acres.

"Q. That would make altogether about 152 acres in Parcel 330 that are west of the road and above the floor of the valley?

"A. Yes, sir.

"Q. Now, Mr. Parsons, how does this portion of Parcel 330 which is west of the road and above the floor of the valley compare with the land in Parcel 321 which is likewise west of the road and above the floor of the valley, not taking into consideration that portion of 321 which lies in the west $\frac{1}{2}$ of section 35; that is to say, leaving out approximately 80 acres there, how does this land in the John Sherman piece, Parcel 330, which lies above the road and to the west compare with the land lying in exactly the same way on the Campbell piece, Parcel 321?"

* * * * *

(2890) "MR. OLNEY: Omitting those two forties clear to the west.

"A. Well, I am dividing this up as I never divided it up before in my life. I should say that this is rather better here than it is up there.

"Q. It is rather better on the John Sherman piece than it is on the Campbell piece? A. I think so.

"Q. But it is all hill farming land isn't it?

"A. It is hill farming land, yes.

"Q. What value would you put upon this land in 330 about

which I have just been asking you, the hill farming land; you remember the general character of it, don't you, Mr. Parsons?

"A. Yes, sir.

"Q. What is it worth?

"A. I am just estimating, without looking at the land. That is a very hard thing to do. If I were out on the ground I might estimate it at one thing and in 15 minutes change my mind. As I have said many times before, this is no time or place to put a value on a piece of land, but as I remember that piece of land I would say \$40 an acre.

"Q. And the balance of the tract would go into the flat valley land? A. Yes; it is in the valley all right.

"Q. Mr. Parsons, you have valued the hill land in Parcel 321, the corresponding hill land in Parcel 321, at \$50 an acre; if you will turn to your notes you will see that. Does that change your value of \$40 an acre in regard to this land in 330?

"A. On 321 you say I have \$50 an acre?

"Q. Yes.

"A. Well, it might. Those valuations were put on right on the ground. I would rather stand by my record because I know how the record was made up.

(2891) "Q. Haven't you got a sufficient general knowledge of that land, and particularly of the land which lies immediately to the north of the Milpitas road as it comes down into the valley—that is the land I am asking you about now—to be able to put a figure on it? How many times have you seen that hill as you have come into Calaveras? A. Probably 20 times.

"Q. It is right there and you can't miss it, can you? A. No.

"Q. You can picture that in your mind's eye now, can't you, Mr. Parsons?

"A. Yes, I have it pretty well pictured, but you don't find any subdivisions like this on the ground.

"Q. Is not this the natural subdivision you would make of

that land, the subdivision between the valley land and the hill land? A. The valley land and the hill land, yes."

* * * * *

"Q. Didn't you make a mental subdivision of it, Mr. Parsons, in order to get the average value of the tract?

"A. I suppose a mental subdivision, yes.

"Q. And any mental subdivision which you made subdivided it along these very lines about which I have been questioning you, didn't it? A. I don't know.

"Q. It must have, must it not? A. I don't know that.

"Q. What other subdivision is it possible that you made in valuing this property, Parcel 330?

"A. As I told you time and time again, I didn't make any such segregation as that at all.

"Q. I am asking you if you did not make it mentally and you said you did; I am asking you if it is possible to value the land and value it properly without making a mental subdivision? (2892) I will put that question to you now; was it possible or is it possible for anyone to properly value Parcel 330 without making a mental subdivision of it into valley lands and hill lands?

"A. Well, I will tell you, Mr. Olney, it depends altogether on how you want to work on it. When I went in there first I didn't have these different farm subdivisions,—321 and 330 and P-268, and all that sort of thing; I simply took the surveys, the government surveys, in sections and quarter-sections, and tried to follow those out as nearly as I could; then when we found that the Spring Valley Water Company was using these ranch numbers I took the same data and went over the ground and fitted it up into these different farm valuations.

"Q. But in fitting it in you must have had in mind, also, and you must have made some proper correlation of the values you obtained before to the particular subdivisions. Now, I come back to my question again: Is it possible for anyone to appraise that land, Parcel 330, without making a mental subdivision of the

property into hill lands on the east, the hill lands on the west and the land in the floor of the valley in between? Is it possible to make a competent appraisalment without subdividing it in that way?

"A. Yes, I think so.

"Q. How would you get at a valuation without making that subdivision?

"A. Just as my notes call for. The western portion, about so many acres—I said, out of this whole piece there is a piece running up on the hill; on the other side there is another piece running up on the hill; the farming land on this side of the hill. To get right down to the exact number of acres, Mr. Olney, I don't think you would do that.

(2893) "Q. What relation did the value of the land on the east and on the west have to the value of the land on the floor of the valley?

"A. In valuing a piece of property you would say, that is not all valley land, there is a piece that runs up on the hill on the east side of the valley; here is another piece that runs up on the west side of the valley.

"Q. You would not put the same value on the east side that you would on the land in the valley, would you?

"A. No, I would say it is not all valley land.

"Q. And you would not put the same value on it? A. No."

The witness does not seem to have been able to appreciate that what Mr. Olney was trying to get him to do was the very thing that would have to be done in order to get at the value of the land.

"Q. Then how is it you get at a total average value of the tract unless you do, as a matter of fact, consider the amount of hill land there is, and in your mind put some value upon it?

"A. I do, of course."

That is what Mr. Olney had been trying for pages to have him do.

"Q. Did you just jump at this value or did you make some

figures on it; did you try to work it out and see what the property was worth?

"A. Of course I would not value the hill land at the same value I put on the bottom land.

"THE MASTER: Q. What value did you put on the bottom land in appraising this tract?

"A. \$150 an acre for the best of it.

"Q. And then did you do any more than say, well, here is a hill farming land on one side and pasture land on the other; we will call it \$125?

"A. No, I did better than that, I think; I said, now here is a quarter section of hill land; in my judgment that is worth \$40 an acre or \$50 an acre, depending upon how the land lays and how it is cut.

(2894) "MR. OLNEY: Q. That is the way you got at it?

"A. Yes, sir.

"Q. Now, Mr. Parsons, if that is the way you got at it, taking your 20 acres of land to the east at \$15 an acre, that would make \$300; your 152 acres to the west at \$40; that would make \$6080, or a total for the hill lands of \$6380. You valued the entire tract at \$38,875, which leaves for the valley lands \$32,495. According to your tabulation, there are 139 acres of flat valley land approximately; at that rate you would value the valley land at something over \$260 an acre?

"A. Then I have valued it too much. \$260 an acre did you say?

"Q. Yes.

"A. That is just two prices then; it is nearer two prices than anything else.

"Q. In other words, you have valued the major portion of this property in the neighborhood of something over 100% more than it should be valued?

"A. On the way you figure it out, yes. If I valued that land at \$260 an acre it is nearer two prices for it than it is one.

“THE MASTER: Q. And if you valued the 139 acres at \$150 an acre, my figures show that your value of that tract would be \$90. A. For the whole tract?

“Q. 139 acres at \$150 would make \$20,850. The total would make it a little less than \$90 an acre?

“A. My entire value is \$38,875.

“MR. OLNEY: Q. Then you consider that upon this particular tract of land, as a matter of fact, you have valued it to the extent of about \$16,000 too much?

“A. Well, I have not figured it out.

“THE MASTER: He means accepting those figures?

“A. Accepting those figures.

(2895) “MR. OLNEY: Q. Is it your opinion that that tract of land is only worth \$90 an acre?

“A. I shall not change my valuation, because my valuation was made on the ground.”

* * * * *

“Q. Now, taking that valuation of \$125 an acre, either you have valued the flat land in this particular John Sherman piece at very much more than \$150 an acre, which you say you consider as the maximum value of flat valley lands in the Calaveras valley, or else you have valued the hill lands at very much more than you have valued other lands of a similar character throughout those hills. Now, which is it?

“A. I don't know. You can figure that either way you have a mind to, I suppose.”

* * * * *

“Q. Now, Mr. Parsons, going back to parcel 331, the Sam Sherman piece, you testified, I think, that about one-third of that Sam Sherman piece was hill land and the balance was valley land; is your value of \$125 on the Sam Sherman piece a valuation which you consider correct?

“A. Yes. That is my valuation of that piece.

(2896) “Q. And you haven't any doubt about that, have you?

"A. No, sir.

"Q. Now, on this one-third of the Sam Sherman piece which consists of land above the valley—hill land—what value would you put on the land that lies at the south end of the Sherman piece?

"A. From \$20 to \$25 an acre—that particular piece there.

"Q. I am asking you about the one-third of the land in the Sam Sherman piece which lies above the floor of the valley, namely, the land toward the south end of the valley; you say \$20 to \$25 an acre?

"A. Yes—let me see, I think that would be about right; say \$25 an acre.

"Q. How will it compare with the Patton place, which lies immediately to the south?

"A. Well, I would rather have the Patton place as a whole, I think than that."

Your Honor will remember that the grade of the Samuel Sherman hill land is much more gradual than that of the Patton place which lies immediately to the south.

"Q. You would rather have the Patton place. A. Yes, sir.

"Q. How does it compare in value?

"A. I would not put quite as much value on that third as I would on the whole Patton place.

"Q. There are 160 acres in that piece, No. 331; one-third of that would be, we will say, approximately 60 acres, on which you would put a valuation of \$25; that would make \$1500. The balance is the flat, level land, isn't it?

"A. I don't quite catch which one you are talking about, Mr. Olney.

"Q. I am talking about 331, the Sam Sherman piece. The balance of 331 is flat, valley land, isn't it? A. Yes, sir.

"Q. Deducting your 60 acres, which you value at \$25 an acre, from your valuation of \$20,000 on this piece, would leave \$18,500 as the value of the valley land, or \$185 an acre?

"A. About \$180 an acre would be nearer it.

“Q. You think, then, there are more than 60 acres in the hill land?

“A. No; one-third of 160 is only 53. It would be about the same thing; it doesn't make any difference whether it is \$180 or \$185; (2897) if you figure it out that way it is too much for the land, too much for the valley land.

“Q. I think you testified that the land in the Sam Sherman piece was not as valuable as the flat land which lies to the north?

“A. Yes, and my figures on your calculation bear me out on that.

“Q. So you did, as a matter of fact, then, in that connection, consider that fact and make some segregation in your own mind at least of the amount of valley land and the amount of hill land, did you not? A. I don't know.

“Q. Now take Parcel 322, on Map 16, the Pomeroy piece; I think you testified there were not to exceed 15 acres, or about 15 acres of flat valley land in that piece, did you not?

“A. That is my idea, yes.

“Q. And the rest of it is hill land? A. Yes, sir.

“Q. And some of it is rather rough, isn't it? A. Yes, sir.

“Q. The land to the south of Pomeroy Creek is approximately the same character as the hill land in 324, is it not, immediately to the south? A. Yes, sir.

“Q. And as the hill land in 321 immediately to the south of that? A. Yes; I guess that is right.

“Q. And the land to the north of Pomeroy Creek is very much of the same character as the land in Parcel 327, is it not?

“A. It is better than that, I think.

“Q. You think it is a little better than that? A. Yes, sir.

“Q. I am speaking simply of the hill land, Mr. Parsons.

“A. Yes, I think I would say that, too.

“Q. Under those circumstances, in view of the values which you have placed upon the hill land to the north and to the south, and the fact that there are only 15 acres of flat land according to

your judgment in this piece, how do you account for your (2898) valuation of \$100 an acre on parcel 322?

“A. Well, to me, parcel 322 was a very attractive piece of land; the soil was good; there is lots of water on it; there is a fine lot of water on it. So far as cultivating is concerned, you could cultivate quite a good deal of it. It was to me a very attractive little piece of ground.

“Q. What value would you put on those hill lands which are immediately south of Pomeroy Creek? A. Well, it is pretty hard to say that, Mr. Olney.

“Q. You know the general character of it, don't you?

“A. Yes, but in segregating a piece of land like that I would want to be on the ground.”

* * * * *

(2899) “Q. Well, assuming you can cultivate it all south of the creek, just take it as rolling hills?

“A. From \$40 to \$50 an acre, if you can cultivate it.”

Of course, if you cannot cultivate it, this subdivision is very much worse for Mr. Parsons than it otherwise would be.

“Q. And that is all you would put on it?

“A. Well, I suppose that is all you should put on it, really.

“Q. And you would put a less value on the land to the north of Pomeroy Creek? A. Yes.

“Q. Quite considerably less, wouldn't you? A. Yes.

“Q. How much would you value that 15 acres of flat valley land at?

“A. Well, to carry out my contention here, I would have to put it pretty high.

“Q. You would have to put them up somewhere in the neighborhood of \$500 an acre, wouldn't you? A. I guess I would.

“Q. And you think still your valuation of \$100 an acre is correct? A. Yes, sir.

“Q. Now, Mr. Parsons, is it not the fact that those hill lands which are good farming land of the general character that lie

between Pomeroy Creek and the Milpitas road on the west side of the valley and are above the floor of the valley but not on the top of the ridge that is, just immediately above the road—

“A. (Intg.) The foot-hills.

“Q. Yes, the foot-hills are worth very much more than \$50 or \$60 an acre, and is not that shown by the valuation you have placed here, and is not that why you have placed a higher valuation on the Pomeroy place than the John Sherman place, and the Sam Sherman place?

“A. I don't think so; I think \$50 an acre is about all they would stand.

“Q. If they would stand only \$50 an acre on that character of land, and the flat valley land would stand only \$150 an acre, how do you work out your valuation?

(2900) “A. Well, according to your proposition, I have put too much on the valley land—that is all.

“Q. After all the care that you say you have observed in making these valuations on the ground, do you mean to say that it is possible that you were that far out?

“A. Yes, I think I am too high, Mr. Olney; after the cross-examination, I am frank to admit that I believe I am too high.

“Q. You believe you are too high? A. Yes, I do.

“Q. Now, Mr. Parsons, as a matter of fact, haven't you said several times when I have asked you the specific question—just taking the tracts and bearing in mind that your valuation of \$100 in the case of the Pomeroy piece was high, and that your valuation in the case of the two Sherman pieces of \$125 was high—aren't those valuations your idea at the present moment of what those particular pieces are worth?

“A. Well, laying aside your way of going at it, I believe that I have put a correct valuation on all of that land, every foot of it exactly.

“Q. If you had to go out and re-appraise the land again, the Pomeroy piece and the two Sherman pieces, you would come back

with the same valuations, would you not? A. Yes, I would.

"Q. Now, that being so, isn't it a fact that the valuations which you have given here as per acreage valuations of these various kinds of lands are too low? A. No, I don't see it."

I say that it is not too severe to characterize a man as stupid who will make an answer of that kind; he was not willing to take either horn of the dilemma.

(2905) "Q. Didn't you state Mr. Parsons, that the flat valley lands in the Calaveras Valley beginning with the Sam Sherman piece, improved as you went north? A. Yes.

"Q. Now, do you make any exception to that rule in the case of Parcel 324? A. No.

"Q. Now, isn't it a fact that in the Sam Sherman piece the soil is comparatively light and there is a very considerable lot of gravel in it, while in Parcel 324 it is a deep strong loam?

"A. Yes.

"Q. Without any gravel?

"A. Very little; some little gravel, not very much.

"Q. How is it then that you have stated here to the Master in response to a question from him that the flat valley land in the Sam Sherman piece is worth as much as the flat valley land in Parcel 324?

"A. The market value; I am talking about the market value; I am not talking about the condition of the land.

"Q. What determines the market value, Mr. Parsons, in your mind? A. The price that it will sell for.

"Q. Why will this light soil of a gravelly nature in the Sam Sherman place sell for as much as the deep, strong loamy soil in Parcel 324? What reason is there why one will sell for as much as the other? A. I can give you two reasons.

(2906) "Q. Give them to me.

"A. One is you can work the John Sherman place——

"THE MASTER: (Intg) The Sam Sherman place?

"A. The Sam Sherman place or the John Sherman place,

certain years when you cannot work 324 on account of the heavy soil. Now, that is one reason. Another reason, the Sam Sherman place and the John Sherman place are very accessible places; it is easier to get at than the other; the other is further down the valley."

Think of a man who claims to be a farmer making an answer like that with reference to a piece of land that had upon it as thrifty an orchard as that prune orchard on the Gaines piece. You can work the Sam Sherman place when you cannot work the other, he says. And there was another thrifty prune orchard on the Campbell place and yet the Sam Sherman place was the best land looked at from its market value standpoint on the floor of the Calaveras Valley.

"Q. Mr. Parsons, acre for acre, is there any comparison in value? A. Yes.

"Q. Between the Sam Sherman place and Parcel 324? Isn't Parcel 324 very much more valuable?

"A. Intrinsic value, Mr. Olney?

"Q. Yes, intrinsic value. A. Intrinsically?

(2908) "Q. Yes.

"A. Without regard to anything else, Parcel 324 is the better piece of ground, but as far as the market value is concerned, the Sam Sherman piece will sell for more money than 324 any time.

"Q. Acre for acre?

"A. I don't know what you mean by acre for acre.

"Q. What distinction do you make between intrinsic value and market value? Do you get the question? A. Yes.

"Q. What is it?

"A. That is a very hard question to answer, Mr. Olney; perhaps the best way to answer it is to say that the market value of a piece of land depends upon many conditions, many factors.

"Q. That is the market value. What is the intrinsic value?

"A. The intrinsic value is simply what the land will produce,

the productivity of the land; that is only one factor in the market value of a piece of ground."

He discovered that after he had talked about the walnut trees and that land being worth \$350 an acre with or without the walnut trees, and he came back later and told us he meant intrinsic value and not market value.

(2908) "Q. Mr. Parsons, how will the flat valley land in Parcel 323 compare with the Sam Sherman piece?

"A. I think you have got some pretty good land in 323.

"THE MASTER: He asked you to compare it with the Sam Sherman piece, 331, as to the flat land.

"MR. OLNEY: The flat valley land.

"A. Well, I should say that was rather better, taking the intrinsic value of the land, than the Sherman place, yes it is, no question.

"Q. How will it compare with the best of the valley land in Calaveras?

"A. I think in that piece you have got some of the very best of the valley land.

"Q. Your description of it, Mr. Parsons, is, some of the best land in Calaveras Valley in this tract. That accords with your recollection, does it? A. Yes.

"Q. Now, you also say that three-quarters of this tract is on the floor of the valley, and there are some 200 acres in this tract. What valuation, by the way, will you put on the hill land on this quarter, 50 acres of hill land, which lies on the east side?

"A. Right along in there, well, I will say \$15 an acre.

"Q. \$15 an acre? A. Yes.

"Q. Are you satisfied with that valuation? .

"A. Yes. It won't make much difference in your calculation whether I make it \$15 or \$20.

"Q. You would not go any higher than \$20? A. No.

"Q. How does that hill land compare with the 80 acres at the east end of 321 which immediately adjoins it?

(2909) "A. 321, that isn't on that map.

"Q. I am asking you to compare the hill land which lies on the east side of 323 with the 80 acres which lies in 321; it is shown more clearly on Map 18, this 80 acres here, the east end of 321.

"A. I don't think it is worth quite as much right along in there as it is a little further up."

* * * * *

"Q. Now, you have then 50 acres which you valued at \$20 an acre, or a thousand dollars; what would you say was the market price of the flat valley land in the John Sherman piece or on the Sherman piece?

"A. On the Sam Sherman place, taking it all in all, I don't think it would go quite as well as the Sam Sherman;"—

Now, that is the valley land of this piece, mind you, that he says is some of the best land in Calaveras Valley.

"—taking all the flat land in 323, I do not believe acre for acre it would bring as much money as it would in the Sherman piece, the market value.

"Q. The market value? A. Yes.

"Q. In other words, although we have some of the best land in the Calaveras Valley in 323 you consider that its market value is less than the market value of the flat land in the Sam Sherman place? A. Yes.

"Q. Does that apply also to the flat land in Parcel 325 immediately to the north?

(2910) "A. I think so; I think it would be just about the same; perhaps not quite to the same extent, but I think so, probably.

"THE MASTER: Q. You think what?

"A. I think that the Sam Sherman place would sell for, the market value of the bottom land of the Sam Sherman place would come pretty near being the same as the market value of the flat land in the Gaines place."

He has said time, time and again that the market value of the flat land in the Sam Sherman piece was greater than those

lands further north, but that the intrinsic value of the land further north was greater than the intrinsic value of the Sam Sherman flat land.

“A. I think that the Sam Sherman place would sell for, the market value of the bottom land of the Sam Sherman place would come pretty near being the same as the market value of the flat land in the Gaines place.

“MR. OLNEY: Q. Mr. Parsons, you replied in response to a question about 323 that the market value of the land in the Sam Sherman piece was greater than the market value of the land in 323.

“A. I will make it greater in both cases, then.

“Q. How much greater is it? A. The market value?

“Q. Yes.

“A. You are simply talking about the bottom lands, or the whole thing?

“Q. The bottom lands.

“A. Well, of course this is just an estimate here, but I should say it would run from \$10 to \$15 an acre or more, probably, \$20 an acre.”

It is interesting to know that a man claiming to be an expert land appraiser and who says that he has spent the time that Parsons said he spent upon this property could come here and tell you that the market value of the flat land in the Sam Sherman piece, which he described as not productive soil, is worth ten or fifteen or twenty dollars an acre more than the flat land in this piece further north which he describes as the best land in Calaveras Valley.

“Q. How did you measure that, Mr. Parsons; what is your line of reasoning?

“A. Well, I think in the Sam Sherman place, as I said before, and in the John Sherman place, you might be able to farm those when you would not be able to farm all of 323 or 325.

“Q. Your answer is confined, of course, to the bottom lands?

“A. Yes.

“Q. You realize, of course, that the prune orchard is a part of this valley land in 325? A. Yes.

(2911) “Q. Take the land, for instance, which is in the prune orchard. Would your answer cover that land as well, that it has not a market value equal to the market value of the flat valley lands in the Sam Sherman piece?

“A. Yes, it would cover the whole thing.

“Q. That is your opinion of that prune land down there, that it hasn't a market value equal to the market value of the flat land in the Sam Sherman piece?

“A. No, I did not say that; I said I would include that in 323—in the bottom land I am including that; I am including that for the tules and the wet land that is not farmed in 323.

“Q. We are speaking of 325.

“THE MASTER: The prune orchard is in the Gaines place, No. 325.

“A. I will say the same there, there is some wet land in there that you won't farm every year by any means.”

* * * * *

(2912) (Referring to parcels 323 and 325.)

“Q. Could you grow alfalfa without irrigation?

“A. I don't think so.

“Q. On any of it?

“A. Not year after year, no; I would not think so.

“Q. On any of it? A. I doubt it very much.

“Q. Why do you say year after year? Do you think you could do it some years and not others? A. Yes.

“Q. Why?

“A. Because it would drown out some years; you would not have any alfalfa there at all the next year.”

This is the land that produced that prune orchard. This land is too wet for alfalfa,—land that Mr. Means told us had no sub-irrigation.

“Q. Isn’t it perfectly feasible to drain that land so that there wouldn’t be too much water? A. I don’t know.

“Q. Did you look into it to see? A. No.

“Q. You did not consider it at all, did you? A. No.”

* * * * *

(2915) “My estimate is 40 to 50 acres * * * of wet ground.”

Now, on redirect examination:

(2970) “MR. SEARLS: Q. When you stated that the existence of the trees added nothing to the value of the tract, did you refer to its market value, or to what you call its intrinsic value?” (These are the trees on the Hadsell tract.)

“A. It does not add to the intrinsic value.

“Q. Does it add to the market value?

“A. In my estimation it does add to the market value of the land. * * * (2971) It makes it more marketable and at a better price.”

Now think of that, if your Honor please. This witness said to Mr. Olney at least in a dozen answers that that orchard was an unproven kind of growth and an unproven country, and that it was not an asset looked at from any standpoint, and he said it positively. He said it would not give advantage to take the trees out, so for that reason he did not look upon them as a detriment.

“Q. In what way does it not add to its intrinsic value, in your opinion?

“A. In my opinion a young orchard in a locality that has not been proven and with trees that have not been proven, does not add anything to the value of the land.”

What is to be thought of the ability of a man to reason who will say that because these trees are young and have not been proven and the locality has not been shown to be suitable for that kind of growth that nevertheless the trees add to the market value of the land? Is it to be assumed that a purchaser contemplating the purchase of such land would not know those facts?

"Q. Your idea is then that other people might not be of the same opinion as you? A. It is."

Now, going back to the hill lands again for a moment.

(2920) "Q. What was your base value, so to speak, on the farming lands in the foothills on the west side of the valley?

"A. Oh, \$40, \$50 or \$60 an acre."

Now, we know that in the case of Brandt-Hansen it was \$35.

"Q. Where have you put \$60 an acre on any land of the character I have asked you about?

"A. Well, I don't know, but that would be my idea as I think of it now.

"Q. Is there a single tract on which you have placed a value of \$60 an acre on any land of that character?

"A. You are talking about any whole piece of land are you?

"Q. Yes. A. I don't know.

"Q. Is there any subdivision of that land that you have appraised at \$60 an acre?

"A. No, because the subdivisions generally included something else."

Original Cost of Pleasanton Lands.

Your Honor has asked whether the plaintiff intended to claim the prices paid for the Pleasanton lands or whether we intended to claim the values shown by our testimony for the respective parcels.

It is to be expected that in purchasing a large area of land owned by a number of individuals, and particularly when the purchases are made by a public service corporation, the mere fact that an effort is being made to assemble the lands in one ownership will reflect its influence and make it impossible to acquire individual parcels at prices which would probably obtain if conditions were entirely normal. The general rule, of course, is that value as of the date of the inquiry is what the public service corporation is entitled to be allowed.

Mr. Hazen in getting at the value of the properties took the Pleasanton lands at cost because the acquisitions were of recent date. I think it may safely be said that the company could not have gotten them for less. Our real estate experts, looking at the lands as agricultural lands, placed values upon them in 1913 somewhat less in cases than the prices paid for them, but the aggregate value found for all the Pleasanton lands in 1913 was greater than the cost of acquisition.

If your Honor finds as to any of these parcels that it could not have been purchased for less than the price paid for it, I think the company would be entitled to the price paid, even though that is greater than the value testified to by our witnesses. If on the other hand you find that the properties could probably have been obtained for the value placed by our witnesses, although that value is less than the prices actually paid, I do not think we are entitled to cost; that is to say, in that case, I do not think value and cost would be synonymous. When I make that statement I mean literally what the company would have been forced to pay to acquire those lands. The subject necessarily involves the consideration of overhead on land, and that subject will be considered later by Mr. Greene.

THE MASTER: And the same is true of lands elsewhere, I presume? There are a good many other places, other than the Pleasanton lands, I think some over in Alameda County.

MR. McCUTCHEN: Yes, in Alameda County; there are a good many places, Calaveras particularly, and also in the vicinity of Sunol.

MR. SEARLS: There is one feature of those Pleasanton lands I might call to your attention; I think all the real estate witnesses valued the lands ex improvements, didn't they?

MR. McCUTCHEN: Yes.

MR. SEARLS: And the purchase prices in all probability included the improvements?

MR. McCUTCHEN: Yes, that is undoubtedly true.

MR. SEARLS: So if you should take the cost you would then have to eliminate the Pleasanton ranch houses in order to compare it with the valuation.

MR. GREENE: In other words, to make the comparison a fair one, Mr. Searls, you would have to add on to the real estate valuations of our witnesses some value for buildings.

MR. SEARLS: Well, I was going to do it the other way; I would subtract your appraisal of the buildings from the cost of the real estate to compare the value.

MR. GREENE: We have the same idea, Mr. Searls?

THE MASTER: Yes, it amounts to the same thing. Did Mr. Hazen make a duplication there then to the extent of the value of the buildings?

MR. SEARLS: No, I think he eliminated the Pleasanton ranch houses altogether.

MR. GREENE: If Mr. Hazen took cost, which included the buildings, and then added buildings on to his appraisal, there would be a duplication.

MR. SEARLS: He did not duplicate cost, he eliminated the buildings so far as his appraisal goes.

